Witness present and duly sworn on 06.04.2024

<u>CROSS EXAMINATION BY SRI.GK ADVOCATE FOR PETITIONER:-</u>

My designation in respondent no.1 company is Assistant General Manager (Legal). I am employed with respondent no.1 since, January 2020. I am not personally aware of O.S.9593/2015, but I have gone through the records and on the basis of the records, I am aware of the facts. Said suit was filed recovery of money. I am the signatory in E.P.329/2022.

2. Said suit was filed on the basis of mortgage deed dated 19.08.2011 executed by petitioner in favour of respondent no.1 herein and other documents. Now I see the said mortgage deed dated 19.08.2011 and since, witness has admitted the said document, the certified copy of said document is now marked as **Ex.P.21**. It is true to suggest that on the said document there is no signature on behalf of respondent no.1 herein. It is true to suggest that there are no signatures of witnesses in the said document. Witness volunteers it is record of deposit of title deeds. I do not have personal knowledge who handed over the documents to respondent no.1. Witness volunteers probable in 2011 petitioner himself handed over the documents.

3. I do not know if it is suggested to me that as on 19.08.2011 petitioner was flying between Delhi to Mumbai, since he is a Commercial Pilot. It is false to suggest that signature of said document of Ex.P.21 is not that of petitioner. If I am asked what is the transaction between respondents no.1 and 2, I say there was construction contract between respondents no.1 and 2 for construction of Sy.No.95 and under the contract respondent no.2 is due to pay sum of Rs.3 Crores 24 Lakhs to respondent no.1 and respondent no.2 and petitioner are the partners. If I am asked whether if I can produce any document to show petitioner and respondent no.1 are partners, I say petitioner himself has produced documents in this regard in the petition.

4. Question:- I suggested to you that you have not produced construction agreement or any invoices in the original suit ? (Question disallowed because documents produced in the suit are matter of record).

5. I have gone through the documents produced by petitioner in the present petition. In 2015 petitioner was residing in the Bengaluru. If I am asked what document is there to show Bengaluru address, I say petitioner has purchased Bengaluru Apartment from respondent no.1. Again witness says there is partnership deed which shows petitioner was doing business in Bengaluru. Prior to filing suit we have sent legal notice to address of Nathasha Golf View Apartment of petitioner. I do not know whether any other communication was addressed to petitioner apart from legal notice at the said Nathasha Golf View Apartment address.

6. I do not know what was the source of the knowledge to respondent no.1 that petitioner's address was Nathasha Golf View Apartment. Shobha Iris Apartment which is 2nd address of defendant no.2 in original suit was constructed by respondent no.1. Petitioner is the owner of said Apartment in Shobha Iris Apartment. The possession of said apartment was handed over to the petitioner in January 2015. If I am asked after handing over the possession whether respondent no.1 was looking after the maintenance of said apartment complex, I say builder will look after maintenance for one year and thereafter, owners association. I do not know when Shobha Iris Apartment maintenance was handed over to owners association.

7. If it is suggested to me that the possession of Shobha Iris Apartment was not handed over to the petitioner, but handed over to Mr.Shaney MD of respondent no.2 herein

I say if must be on instruction of petitioner. It is false to suggest that without instruction of petitioner the possession was illegally handed over to Mr.Shaney. I can produce documents to show petitioner instructed respondent no.1 to hand over the possession to Mr.Shaney.

8. It is false to suggest that petitioner came into possession of Shobha Iris Apartment only in March 2018 and earlier to that Mr.Shaney was in possession. It is false to suggest that petitioner is permanent resident of Gurgaon and was never resident of Bengaluru. I do not know whether any communication was issued by respondent no.1 to petitioner at Shobha Iris Apartment address. To my knowledge petitioner has purchased Shobha Iris Apartment and two other properties from respondent no.1. It is true to suggest that as per the sale agreement at Ex.P.11 dated 25.11.2005 the address of petitioner stated as Gurgaon. The document now shown to me is certified copy of sale deed dated

19.01.2015 executed by respondent no.1 in favour of petitioner and even in said sale deed the address of petitioner is given as Gurgaon address and the said sale deed is now marked as **Ex.P.22**. It is true to suggest that respondent no.1 was aware that from 2005 to 2015 the address of petitioner in Gurgaon. Witness volunteers upto 15th January 2015. It is true to suggest that Ex.P.13 to Ex.P.17 are letters addressed by respondent no.1 to petitioner at his Gurgaon address. It is true to suggest that even in Ex.P.18 address of petitioner is Gurgaon address. I do not know whether petitioner has at any point of time stated that he has changed his address from Gurgaon to Bengaluru. It is true to suggest that respondent no.1 has issued email as per Ex.P.19 to petitioner on 03.05.2008 and therefore, since then respondent no.1 was aware of email ID of petitioner.

9. If it is suggested to me that document now shown to me is email issued by respondent no.1 to petitioner, I say logo of respondent no.1 is not there and therefore, I cannot say. It is true to suggest that email ID of petitioner was the same in 2015 to which we had earlier issued several emails. If it is suggested to me that at paragraph no.15 of the objections I have stated that before instituting the suit legal notice was issued to respondent no.2 by email and why legal notice was not issued to petitioner also by email, I say legal notice will be issued by our lawyer and therefore, sending the same by email will not arise. We would have given email ID of respondent no.2 to our lawyer to send the notice. It is false to suggest that although we were also aware of email of petitioner we deliberately did not give the email of petitioner to our lawyer.

10. A copy of Ex.R.2 is not sent to petitioner. Witness volunteers it is addressed to president / secretary of owners association of Shobha Iris Apartment. I do not know if it is suggested to me that reply at Ex.R.5 is not sent on instructions of petitioner. If it is suggested to me that suit summons in original suit was not served on petitioner I say he has avoided and therefore, we took substituted service. It is false to suggest that although we were aware that petitioner is not residing in Bengaluru, but residing in Gurgaon and petitioner does not know Kannada we took out substituted service in Kannada daily Bengaluru Edition. It is false to suggest that respondent no.1 and 2 in collusion have obtained decree against the petitioner. It is false to suggest that I have given false evidence.

RE-EXAMINATION:- NIL

(Typed to my dictation in open court.)

R.O.I. & A.C.,

(SUDINDRANATH.S.)
C/C LXXXVIII ADDL. CITY CIVIL & SESSIONS JUDGE,
BENGALURU.