IN THE HIGH COURT OF BOMBAY AT GOA

APPEAL FROM ORDER NO. 28 OF 2015

M/S. EUPHORIA HOTELS PRIVATE LIMITED THR. ITS DIRECTOR MR. HARMOHAN SINGH CHANDHOK. ... Appellant

Versus

ACROSS INDIA TOURISM PVT. LTD., THR. ITS DIRECTOR MR. PRANAB KUMAR PAL AND 2 ORS., ... Respondents

Mr. S. S. Kantak, Senior Advocate with Mr. Sahish Mahambrey, Advocate for the appellant.

Mr. V. Rodrigues, Advocate for the respondent nos.1 and 2.

Mr. Rui Gomes Pereira, Advocate for the respondent no.3.

Coram:- C. V. BHADANG, J.

Date:- 28th October, 2015

P.C.

Heard Shri Kantak, the learned Senior Counsel for the appellant, Shri Rodrigues, the learned Counsel for the respondent nos.1 and 2 and Shri Pereira, the learned Counsel for the respondent no.3.

2. The brief facts are that in a suit filed by the respondent nos.1 and 2, the appellant was injuncted by an order dated 11/02/2013 from selling, alienating, leasing, mortgaging and/ or transferring the suit property to any third party.

3. It appears that on an application filed by the appellant, the order

was modified on 18/12/2013, thereby the application Exhibit No.44 filed by the appellant, was partly allowed and it was directed that the order dated 11/02/2013 shall stand vacated, upon the appellant/ defendant furnishing a Bank Guarantee of Rs.3,71,22,000/- within a period of 15 days.

It is undisputed that Bank Guarantee was furnished by the appellant. It is further undisputed that subsequent to this, the suit property has been transferred in favour of third parties.

4. It is submitted on behalf of the appellant that the order is causing prejudice to the appellant. In so far as challenge to the impugned order is concerned, it is submitted that the impugned order is based on incorrect recording of the fact. In particular, it is submitted that the impugned order records that, "there was an agreement between the plaintiffs and the defendants, which fact is not in dispute". It is also submitted that the impugned order incorrectly records that the agreement between the plaintiff no.2 and the defendant no.1 has already been terminated. The learned Senior Counsel would submit that this is the only reason recorded while holding that the respondents/ plaintiffs have a prima facie case. The learned Senior Counsel, therefore, submits that it would be appropriate that the matter is remanded to the Trial Court, for deciding the application for Temporary Injunction afresh, after granting opportunity of hearing to the parties. The learned Senior Counsel, on instructions, submits that the appellant is willing to keep the Bank Guarantee alive during the

pendency of the application for Temporary Injunction.

5. It is submitted by Shri Rodrigues, the learned Counsel for the first and second respondents that although the observations of the Trial Court may not be entirely incorrect, the respondents have no objection for sending the matter back to the Trial Court, subject to the condition that the appellant keeps the Bank Guarantee alive.

6. It is clear that on furnishing the Bank Guarantee, order of injunction passed on 11/02/2013 stood vacated. Thus, the question, which would survive for consideration is the need for continuing the Bank Guarantee. It would be appropriate that the Trial Court decides the said issue, after hearing the parties. The learned Trial Court shall decide the application Exh.2-D irrespective of the fact that the subject matter of suit has been transferred during the pendency of the suit.

7. Thus, on hearing the learned Counsel for the parties and in view of the concession recorded at the bar, the following order is passed :

(i) The appeal is partly allowed.

(ii) The Trial Court shall decide the application for Temporary Injunction (Exh.2-D) afresh, in the light of the observations made above, after hearing the parties and in accordance with law.

(iii) The parties would be at liberty to file additional affidavit and documents, if any, subject to the condition that no new facts shall be introduced, besides the pleadings already on record before the learned Trial Court and those on record in this appeal.

(iv) This shall be subject to the condition that the appellant renews the Bank Guarantee within a period of 15 days from today and the Bank Guarantee is kept alive till the disposal of the application Exh.2-D.

(v)The Trial Court shall decide the application for Temporary Injunction (Exh.2-D)as expeditiously as possible and preferably within a period of six months from today.

(vi)In the circumstances, there shall be no order as to costs. as to costs.

C. V. BHADANG, J.

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