IN THE HIGH COURT OF BOMBAY AT GOA

APPEAL FROM ORDER NO. 23 OF 2014

Mr. Sergey Sarychve & Anr. …. Appellants

Versus

M/s Cosmic Connection Resorts Pvt. Ltd. …. Respondent

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Shri Mahesh Amonkar, Advocate for the Appellants.

Shri Chaitanya Padgaonkar, Advocate for the Respondent.

CORAM:- C. V. BHADANG, J.

DATE:- 25th NOVEMBER, 2016

ORAL ORDER:

By this appeal, the appellants/original defendants are challenging the order dated 25.02.2014 passed by the learned Civil Judge Senior Division at Mapusa in Special Civil Suit No. 5/2012/C, by which the appellant no. 2 has been directed to hand over the possession of the suit property to the respondent/plaintiff. The respondent is directed not to alienate or to create third party rights in aforesaid properties, till the disposal of the suit.

2. The brief facts are that the respondent-M/s Cosmic Connection Resorts Pvt. Ltd., is a private limited Company, in which Alexander Mamedov and appellant no. 1-Mr. Sergey Sarychev were the two Directors. The

Company was incorporated with the object of carrying on business of hotels. Both the Directors are Russian nationals.

3. It appears that certain disputes and differences arose between the two Directors and the respondent is claiming that appellant no. 1 has resigned from the Directorship of the Company as per the resignation letter dated 05.12.2008, copy of which is submitted to the Registrar of Companies.

4. The Company is owning the following properties inter-alia amongst others:

(i) Property known as 'Gumal Vado' or 'Deulade' bearing survey no. 262/5 of village Anjuna, alongwith a residential house, bearing panchayat house no. 1694(2);

(ii) Property known as 'Wadi Aframent' or 'Mando' bearing survey no. 350/8 of village Siolim with bungalow therein bearing house no. 15/1 (wherein the defendant no. 2 at present residing);

(iii) Two apartments as 'Sylvan Apartments' situated at Bamon Wado, Siolim, Goa and

(iv) Property at Korgao known as 'Ghar Bhatle Darval' bearing survey no. 589/11 of village Corgao, Bardez Goa and at Arambol bearing survey no. 60/1, 60/3 of village Arambol and all the said properties are now in possession of defendant no. 2 at the instance and on behalf of defendant no. 1.

5. The present dispute pertains only to properties at serial nos. (i) and (ii) above, which are in possession of the appellants.

6. The respondent filed the aforesaid civil suit for restoration of possession of the said properties and for mandatory and permanent injunction, in which the respondent, is seeking the following reliefs:

(a) That by way of mandatory injunction the defendant no. 2 be directed to handover the possession of the suit properties to the plaintiff and the defendants, their agents, servants and any other person acting on their behalf be directed not to interfere with the assets of the plaintiff.

(b) The defendants are directed to pay Rs.1,27,54,500/- (Rupees one crore twenty seven lakhs fifty four thousand five hundred only) as compensation and pay interest of Rs.18% on the same till handing over the possession.

(c) The defendants be directed to pay the cost of the suit.

7. It appears that the appellants filed their written statement and raised a counter claim. The appellants claim that the alleged resignation tendered by appellant no. 1 is false and a forged document. In such circumstances, the appellants are seeking declaration that the alleged resignation letter is forged, illegal and false and consequently, Form No.32 uploaded in the office of the Registrar of Companies, is null and void and for a consequential declaration that appellant no. 1 continues to be the Director of the Company. The appellants are also seeking a declaration that the alleged resolution taken, without notice to the appellant no. 1, inducting Ms. Anna Rogovskaya as Director, is illegal and void and not binding on the appellant no. 1. The appellants are also seeking permanent injunction restraining the respondent from holding out or representing to the public or the government authorities that the appellant no. 1 does not continue to be the Director of the Company.

8. The respondent filed an application for temporary injunction in mandatory form and prayed that appellant no. 2 (defendant no. 2) be directed to hand over to the respondent the possession of the aforesaid properties and

not to interfere with the suit properties or assets of the Company.

9. The application was opposed on behalf of the appellants.

10. The learned Trial Court by impugned order has directed the possession of the said properties at serial nos. (i) and (ii) above to the respondent. Feeling aggrieved, the appellants are before this Court.

11. I have heard Shri Amonkar, the learned Counsel for the appellants and Shri Padgaonkar, the learned Counsel appearing for the respondent. With the assistance of the learned Counsel for the parties, I have perused the record and gone through the impugned judgment.

12. It is submitted by Shri Amonkar, the learned Counsel for the appellants that the alleged resignation letter is forged and fabricated and it is not shown that it has been acted upon by the Registrar of Companies. It is submitted that the Trial Court has found that the legality of the resignation letter will have to be gone into at the trial of the suit. The learned Counsel pointed out that even according to the respondent, the appellants are not in possession of the aforesaid two properties from year 2010 and the suit is filed

in the year 2012. It is submitted that in such circumstances, no case for grant of a drastic relief, of mandatory injunction at interim stage, was made out. The learned Counsel pointed out that apart from the absence of *prima facie* case, the respondent has not demonstrated the other requirements about balance of convenience and irreparable loss, which could be caused to the appellants, in the event the injunction is not granted. The learned Counsel pointed out that in an appropriate case, the respondent could be compensated in terms of money and in fact, the respondent has claimed compensation in the suit.

13. On the contrary, it is submitted on behalf of the respondent that in view of the resignation letter dated 05.12.2008, the appellant no. 1 has ceased to be a Director of the Company. It is submitted that in his place another Director has been inducted and the necessary particulars have been furnished to the Registrar of Companies in Form No. 32. It is submitted that once, appellant no. 1 has been ceased to be a Director, he has no right to be in possession of the properties belonging to the Company. The learned Counsel was at pains to point out that appellant no. 1 in such circumstances could not have handed over the possession of the properties in favour of the alleged Attorney i.e. appellant no. 2. It is submitted that the learned Trial Court after

considering all the relevant circumstances has rightly directed the appellant no. 2 to hand over the possession to the respondent. The learned Counsel has extensively taken me through the pleadings, written statement and the counter claim, in order to submit that even according to the respondent, the day to day affairs including the financial matters of the Company, were looked after and managed by Alexander Mamedov. It is thus submitted that no interference is called for, in the impugned order.

14. I have carefully considered the circumstances and the submissions made. Admittedly, the Company was formed with two Directors namely, Alexander and appellant no. 1 herein and at the inception of the Company, each of them were holding 50% of the share capital. Thus, it can be seen that the case of the plaintiff entirely rests on the resignation letter dated 05.12.2008, said to be given by the appellant no. 1. The learned Trial Court in the impugned order has found that the allegation about the resignation letter being a fabricated and forged document will have to be looked into on merits after evidence is led. A perusal of the impugned order does not show that the learned Trial Court has even *prima facie* found that the resignation letter is genuine or that it is not a forged or fabricated document. In a dispute of the present nature, unless and until the Court *prima facie* comes to the conclusion,

that the resignation letter is a genuine document, any relief, much less of a drastic nature of mandatory injunction at interim stage, could have been granted. The learned Trial Court has basically relied on the fact that the appellant no. 1, in the written statement has stated that Alexander Mamedov was given power to operate the Bank Account and has thus, found that *prima facie* case is made, out that Alexander Mamedov was managing the affairs of the company. Once the Trial Court has not come to the conclusion that *prima facie* the resignation letter is forged or fabricated, any such management of the Company is bound to be on behalf of both or all the Directors. Furthermore, the appellant no. 1 has claimed in the written statement that the respondent was managing the assets of the Company, as per the instructions of appellant no. 1, as appellant no. 1 was staying in Russia. Any pleadings in the written statement have to be read as a whole. It is further significant to note that *prima facie* at this stage, it is neither alleged in the plaint nor any document is produced to show, that the Registrar of Companies has acted on the basis of the resignation letter and necessary correction is carried out in the record of the Registrar of Companies to show that appellant no. 1 has ceased to be the Director of the Company. Even on the count of irreparable loss and balance of convenience, I do not find that the finding recorded by the Trial Court can be sustained. In the event, the respondent succeeds in the suit, the question of grant of adequate compensation/mesne profits can always be considered and granted by the Trial Court. It is well settled that mandatory injunction at interim stage can be granted in exceptional circumstances, in order to restore status quo ante. In the present case, admittedly, the appellants are in possession of the two properties from the year 2010. The suit is filed in the year 2012. In such circumstances, I find that the impugned order directing handing over of the possession cannot be sustained. The parties also state that the trial in suit has already commenced in which, defendant no. 2 is under cross examination.

15. In the result, the following order is passed:

O R D E R

(a) The appeal is allowed.

(b) The impugned order is hereby set aside. However, the appellants shall not create any third party interest in the aforesaid two properties and shall properly maintain the same until the disposal of the suit.

(c) The Trial Court shall decide the suit as expeditiously as possible and preferably within a period of one year from the date of receipt of this order.

(d) Parties to co-operate for time bound disposal of the suit.

(e) Rival contentions on merits are left open.

(f) In such circumstances, there shall be no order as to costs.

C. V. BHADANG, J.

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