

IN THE HIGH COURT OF BOMBAY AT GOA**SECOND APPEAL NO.88 OF 2015**

M/S.HORIZON REALTORS,
REPRESENTED BY ITS PARTNER
IGNATIUS TONY PEREIRA AND 2 ORS. APPELLANTS.

V/S

MR.NARINDER KANDHARI. RESPONDENT.

Mr. Jagannath J. Mulgaonkar, Advocate for the appellants.

Mr. Parag S. Rao, Advocate for the respondent.

CORAM :- F.M. REIS, J.

Date : - 29TH JULY, 2016.

P.C. :

Heard Mr. J. Mulgaonkar, learned Counsel appearing for the appellants and Mr. Parag S. Rao, learned Counsel appearing for the respondent.

2. The above appeal challenges the Judgments passed by the Courts below, whereby the Counter Claim filed by the appellants came to be rejected.

3. Mr. Mulgaonkar, learned Counsel appearing for the

appellants has assailed the impugned Judgments essential on the ground that the appellant No.1 is a partnership firm, wherein the appellant No.2 is a partner and that they own premises in the project in which the respondent also has purchased a residential flat. It is pointed out that in flagrant violation of the terms of the Sale Deed, the respondent has converted the flat into a kitchen and restaurant which gave rise to a cause of action to the appellants to seek a relief as prayed for in the Counter Claim. The learned Counsel further submits that such activity is carried out by the respondent without obtaining a requisite permission for change of user, nor obtaining any permission from the Statutory Authorities. The learned Counsel further points out that the subject property is located within the CRZ area and, as such, permissions from the CRZ Authority were mandatory. The learned Counsel further points out that the Courts below have erroneously dismissed the Counter Claim on the ground that the appellants have no locus standi as the partnership has been dissolved and the dispute with regard to distribution of assets is pending before an Arbitrator. The learned Counsel further points out that such activity on the part of the respondent would cause nuisance to the units belonging to the appellants. The learned Counsel has, thereafter, extensively taken me

through the Judgment of the learned Lower Appellate Court to point out that all the contentions raised by the appellants have not been duly considered by the learned Lower Appellate Court.

4. On the other hand, Mr. Parag Rao, learned Counsel appearing for the respondent has supported the impugned Judgments. The learned Counsel points out that once the partnership has been dissolved, there is no question of an individual filing a suit on behalf of such a partnership to claim a relief as prayed for. The learned Counsel further points out that after the partnership is dissolved, the only suit which can be filed is between the two partners inter se and not against any third party unless the distribution of assets of the partnership is effected. The learned Counsel further points out that the issue is pending before the learned Arbitrator and, as such, the Counter Claim preferred by the appellant is an abuse of the process of law.

5. I have considered the submissions of the learned Counsel and I have also gone through the records. With regard to the contention of Mr. Mulgaonkar, learned Counsel appearing for the appellants that no permissions have been obtained for the change of user by the

respondent, I find that the learned Lower Appellate Court, while examining such aspect has noted that Exhibit-96 is the permission granted by the Authorities for change of user. It is also not disputed that the permissions obtained for the project, which includes the subject flat, is for a resort and, as such, the contention that no restaurant activity can be permitted in such a resort, is totally erroneous. The Courts below have considered the submissions of both the parties and have concurrently come to the conclusion that the appellants are not entitled for the relief sought in the counter claim. Admittedly, the subject flat is not an asset of the partnership and consequently, the relief sought by the appellants cannot be granted.

6. On a plain reading of the substantial questions of law as proposed, it clearly reveals that considering such questions would entail reappreciation of evidence on record which is not permissible in the present second appeal. The contention of the appellants that such activity by the respondent would cause nuisance to the units belonging to the appellants has also been examined by the Courts below which did not find favour with such allegations of the appellants. In such circumstances, considering the concurrent finding of facts by both the

Court below and other material on record, I find that there are no substantial questions of law which arise in the present appeal for consideration under Section 100 of the Civil Procedure Code.

7. The appeal stands accordingly rejected.

F.M. REIS, J.

ssm.