

IN THE HIGH COURT OF BOMBAY AT GOA

WRIT PETITION NO. 908 OF 2016

MABEREST HOTELS PVT. LTD., THR.
AUT. SIG. MR. SAHDEV SINH ZALA.,

... Petitioner

Versus

DILIP V. KOTHARI.,

... Respondent

Shri J. E. Coelho Pereira, Senior Advocate with Shri Somnath B. Karpe, Advocate for the petitioner.
Shri V. Nayak Salatry, Advocate for the respondent.

Coram:- F. M. REIS, J.

Date:- 29th November, 2016

P.C.

Heard Shri J. E. Coelho Pereira, learned Senior Counsel appearing for the petitioner and Shri V. Salatry, learned Advocate appearing for the respondent.

2. The challenge in the above petition is to an order passed by the learned Senior Civil Judge at Panaji dated 28.10.2015 and 26.4.2016 whereby the respondent who is the plaintiff in the suit is permitted to lead secondary evidence.

3. Shri J. E. Coelho Pereira, learned Senior Counsel for the petitioner points out that grave injustice would occasion to the petitioner, as according to him, the impugned order was passed without giving a hearing to the petitioner. The learned Counsel further points out that an application was filed to recall the first order dated 28.10.2015 but the learned Judge proceeded to

dismissed the application on the ground that the Court had no powers to recall its order. The learned Senior Counsel further submits that as the petitioner was not given an effective hearing to argue the matter, the impugned order would lead to a failure of justice to the petitioner. The learned Senior Counsel has also brought to my notice the judgment passed by this Court wherein this Court took a view that while disposing of the application for secondary evidence reasons have to be recorded. The learned Senior Counsel further submits that as the respondent has failed to satisfy the requirement of Section 65 of the Evidence Act, the learned Judge has acted in material irregularities effecting the jurisdiction in permitting the respondent to lead secondary evidence. The learned Senior Counsel relied upon the judgment of the Apex Court in the case of U. Sree Vs. U. Srinivas reported in (2013)2 SCC 114. The learned Senior Counsel, as such, points out that the impugned orders passed by the learned Trial Judge be quashed and set aside.

4. On the other hand, Shri V. Salatry, learned Counsel appearing for the respondent has supported the impugned orders. The learned Counsel points out that the petitioner is unnecessarily delaying the matter without any justification and taking frivolous stands only to defeat a legitimate claim raised by the respondent in the suit. The learned Counsel further points out that the respondent served a notice to the petitioner dated 30.7.2014 to produce the originals of the documents which were

stated to be in the possession of the petitioner. The learned Counsel further points out that the petitioner opposed such request by sending a reply inter alia disputing the correctness of the entries in such documents. The learned Counsel further submits that the financial statement of the Company are to be maintained in the registered office of the petitioner and as such, as the petitioner failed to produce such documents, the learned Judge was justified to allow the respondent to led secondary evidence. The learned Counsel further points out that the respondent do not have the originals of such Balance Sheets referred to in the said notice but, however, the respondent shall produce a certified copies of the Balance Sheets which has been submitted to the concerned Registrar of Companies at the time of recording of the evidence. The learned Counsel as such points out that there is no failure of justice to the petitioner, as according to him, all the alleged defences sought to be raised by the petitioner are matters to be examined at the time of the final hearing of the suit on appreciation of evidence on record. The learned Counsel as such submits that petition be rejected.

5. I have duly considered the submissions of the learned Counsel and I have also gone through the records.

6. The orders impugned are the orders passed allowing the respondent to produce secondary evidence of the Balance Sheets of the petitioner's company. It is not disputed by the learned Senior Counsel appearing for the petitioner that the financial

statements of the company have to be kept at in the Registrar Office of the petitioner's company. The respondent served a notice at the registered office to produce the originals of the financial statement of the petitioner for the particular years. The petitioners failed to produce such documents but contended that there were some fraudulent entries in the alleged statement sought to be produced by the respondent.

7. In such circumstances, in the present case, the existence of the Balance Sheets for the particular years have not been disputed by the petitioner. The only objection raised is with regard to the authenticity, and to the entries therein which according to the petitioner have been fraudulently introduced at the instance of the respondent. This is a matter to be examined by the learned Judge after evidence is recorded at the time of appreciating the evidence on record. Merely because leave is granted to produce the documents by itself does not establish the contents thereof which are matters the parties have to establish on its own merits during the course of the trial. In the present case, as the respondent states that the respondent shall produce the certified copies of the Balance Sheets filed before the Registrar of Companies, I find that, reserving all the objections of the petitioner to the correctness, authenticity or otherwise of such documents, there is no reason for interference in the impugned order at this stage of the proceedings. The petitioner, if so advised may challenge the impugned order in case any

adverse order is passed by the learned Judge at the time of the final disposal on merits. At this stage, I find that there is no failure of justice to the petitioner which would call for interference in the impugned orders by this Court in a petition under Article 227 of the Constitution of India. Reserving the right of the petitioner, if so advised, to challenge the impugned orders in case of a adverse order at the time of the final disposal of the suit on merits, the above petition stands disposed off.

F. M. REIS, J.

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