

IN THE HIGH COURT OF BOMBAY AT GOA**WRIT PETITION NO. 912 OF 2015**

1. Sunrise Craft Centre, a proprietorship concern of late Paras Kunungo, Ground Floor, Hotel Fidalgo, 18th June Road, Panjim, Goa.
2. Smt. Paras Kunungo, through constituted attorney, Amit Kunungo, widow of late Paras Kunungo, Ground Floor, Hotel Fidalgo, 18th June Road, Panjim, Goa. Petitioners

Versus

M/s Mabarest Hotels Private Limited, a Company incorporated under the Company Act, 1956 with its registered office at 18th June Road, Panjim, Goa, represented in this act by its Director, Shri Jayant Shetty. Respondent

Mr. John Lobo, Advocate for the Petitioners.

Mr. J. Coelho Pereira, Senior Advocate with Ms. J. Godinho, Advocate for the Respondent.

CORAM:- C.V. BHADANG, J.

DATE:- 28th JULY, 2016.

ORAL JUDGMENT:

Rule. Rule made returnable forthwith. Ms. Godinho, the learned Counsel appearing on behalf of the respondent waives service. Heard finally, by consent of the parties.

2. The challenge in this petition is to the order dated 07.07.2015, passed by the learned Senior Civil Judge at Panaji in Special Civil Suit No. 133/2003/A, whereby application (Exhibit-55), filed by the respondent/plaintiff has been allowed and the defence of the petitioners/defendants has been struck off, in terms of Order XV-A of the Code of Civil Procedure (CPC).

3. The provisions of Order XV-A, Rule 1 of CPC envisage that the lessee or the licensee, shall deposit such amount, as may be directed, on account of arrears of rent or license fees up to the date of the order and thereafter, shall continue to deposit

such rent or license fees. Rule 2 of Order XV-A of CPC can be invoked, only where, there is an order passed, under Rule 1 of Order XV-A of C.P.C. and there is a breach thereof.

4. In the present case, it is an undisputed position that there was no order passed by the learned Trial Court under Rule 1 of Order XV-A of CPC, directing the petitioners to deposit any amount towards the license fees. It is further undisputed that the petitioners on their own accord filed an application showing their willingness to deposit such amount and it was accordingly being deposited, though irregularly. Today it is not disputed that all the arrears are deposited/paid to the respondent.

5. Considering the fact that there was no order under Rule 1 of Order XV-A of CPC passed, in my considered view, the impugned order cannot be

sustained. An order of striking off defence is a drastic order, which shuts out the litigant from contesting the proceedings and any such order, can be passed, only in accordance with the relevant provisions.

6. The learned Counsel for the petitioners, on instructions, submit that the petitioners undertake that, henceforth, the petitioners shall punctually deposit the amount before the Trial Court on or before 10th of each English calendar month.

7. The statement made on behalf of the petitioners is accepted and the following order is passed.

O R D E R

(a) The petition is allowed.

(b) The impugned order dated 07.07.2015, is hereby set aside.

(c) The petitioners shall continue to deposit the license fee, every month on or before 10th of each English calendar month.

(d) In the event, there is default, it would be open for the Trial Court to pass appropriate order in accordance with law, after hearing the parties.

(e) The nine original drafts deposited by the petitioners in pursuance of order dated 01.03.2016, shall be returned to the petitioners, after retaining xerox copies of the said drafts, on record.

(f) The petitioners undertake to get the drafts re-validated and shall hand over the same to the respondent or to his Counsel, appearing before the Trial Court, within four weeks from the date, they are handed over to the petitioners.

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

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

(i) Rule is made absolute in the aforesaid terms, with no order as to costs.

C. V. BHADANG, J.

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