

IN THE HIGH COURT OF BOMBAY AT GOA**WRIT PETITION NO. 636 OF 2016.**

M/s Blue Streak Hotels Pvt. Ltd.
A Private Limited Company
Represented herein its Managing Director
Ms. Mangala Nagaraj
Having its registered office at
Flat No. 104, No.38/38
J.J. Apartments, Vijayarangam Layout
Basavanagudi, Belgaluru
Karnataka - 560 004

..... Petitioner

V/s

1. Mr. Franky Fernandes
Major of age, married,
Businessman, Indian Citizen,
Residing at h. No. 191,
St. Lawrence, Agassaim, Goa

2. Mrs. Narbada Dabal
Wife of Mr. Franky Fernandes
Major of age, married,
Businessman, Indian Citizen,
Residing at H. No. 191,
St. Lawrence, Agassaim, Goa.

..... Respondents.

Shri S. S. Katak, Senior Advocate with Mr. Preetam Talaulikar,
Advocate for the Petitioner.
Mr. Aldrin Monteiro, Advocate with Mr. Chandrakant Sawant,
Advocate for Respondent no.1 and 2.

Coram:- C. V. BHADANG, J.
Date :- 06.06.2017

ORAL JUDGMENT

The Petitioner is challenging the order dated 02.03.2016 by which the learned Trial Court has dismissed the application Exhibit

D-33 which was an application filed by the Petitioner under Order XV-A of the Code of Civil Procedure, 1908 (CPC, for short).

2. Perusal of the Order shows that the learned Trial Court has dismissed the application on the ground that the same cannot be allowed at this stage and can be looked into after the parties adduce evidence.

3. I have heard the learned Senior Counsel Shri S. S. Kantak for the petitioner and the learned Counsel for the Respondent no. 1 and 2.

4. In this case the agreement between the parties is not disputed. The learned Counsel for the respondents submits that the provisions of Order XV-A of CPC as are made applicable to Goa, do not include a suit between a licensor and a licensee. On the contrary, it is submitted by the learned Senior Counsel for the petitioner that the said Order would be applicable even in case of a suit for eviction between a licensor and licensee. It is alternatively submitted that such Order can also be passed by the Trial Court in view of the powers available under section 151 read with Order 39 Rule 10 of the CPC. It is further submitted that the consideration

of an application under Order XV-A of CPC cannot be postponed till after the parties lead evidence, as it involves consideration of limited aspect as to the admitted rent and/or license fee.

5. On hearing the learned Counsel for the parties, I find that all these aspects and the rival contentions are not considered by the learned Trial Court and thus it would be appropriate that the application is sent back to the Trial Court for deciding it afresh in accordance with law.

6. In the result, the following Order is passed:

ORDER

- (i) The petition is partly allowed.
- (ii) The impugned order is hereby set aside.
- (iii) The application at Exhibit D-33 is sent back to the Trial Court for deciding it afresh in accordance with law.
- (iv) The Trial Court shall decide the application as expeditiously as possible and within a period of 8 weeks from the receipt of this order.
- (v) The rival contentions of the parties are left open.

- (vi) Rule is made absolute in the above terms with no order as to costs.

C. V. BHADANG, J.

msr.