

IN THE HIGH COURT OF BOMBAY AT GOA
MISC. CIVIL APPLICATIONS NO.868 & 869 OF 2016
IN
APPEAL FROM ORDER NO.22 OF 2015

Sanjeev Dhingra,
son of Shri Virendra Dhingra,
resident of R/B-183,
Greater Kailash-1, New Delhi-110 048
Through its Power of Attorney,
Mr. Jatin Sahani, aged 31 years,
bachelor, Indian National, businessman,
son of Pramod Kumar Sahani,
resident of Candolim, Bardez, Goa.

...Applicant

V/s

Eastern Star Hotels & Resorts Pvt. Ltd.
Having registered office at E-186,
Greater Kailash New Delhi, 110 001,
represented herein by its Authorized Representative,
Vikram Gohar, son of Javarlal Gohar,
aged 32 years, married, Indian National,
resident of Betim, Bardez-Goa.

....Respondents

Shri Sudin M.S. Usgaonkar, Senior Advocate with Ms. Vinita Palyekar, Advocate for the Applicant.
Shri S.G. Desai, Senior Advocate with Shri Jatin Ramaiya, Advocate for the Respondents.

CORAM : NUTAN D. SARDESSAI, J.

Reserved on : 3rd FEBRUARY, 2017
Pronounced on : 10th FEBRUARY, 2017

ORDER :

Heard Shri S.M. Usgaonkar, learned Senior Advocate for the applicant and Shri S.G. Desai, learned Senior Advocate for the respondents on the application for the modification of the judgment and order dated 8/09/2016 passed by this Court in the Appeal From Order No.22/2015 and on the application for an extension of

time to deposit the amount. It was the contention of Shri S.M. Usgaonkar, learned Senior Counsel for the applicant that the present application was only for the modification of the order dated 8/09/2016 passed by this Court while deciding the Appeal From Order against the order of the Trial Court dated 23/01/2015. No question of review arose as there was no challenge to the findings rendered by this Court. There were ample powers in this Court to reduce the amount so fixed and which could be to the extent of 10% and therefore the application had to be allowed.

2. Shri S.G. Desai, learned Senior Counsel for the respondents vehemently opposed the application on the premise that the order was passed on 8/09/2016 while the applicant applied for the certified copy of the order only on 14/09/2016 and thereafter moved the present application on 27/10/2016 for the modification of the order. The time limit to make the deposit as per the order of this Court dated 8/09/2016 expired on 20/10/2016 much before the present application could be moved and an application was moved by the applicant for extension of time by six weeks only after the expiry of the period of making the deposit on 20/10/2016. The applicant had moved the vacation Judge thereafter who by his order dated 9/11/2016 held that though the application was styled as one for the modification of judgment and order dated 8/09/2016 appeared to be an application in the nature of a review or at least

as a partial review and therefore the applicant would have to place the matter before the learned Judge who had made the order on 8/09/2016.

3. Shri S.G. Desai, learned Senior Counsel for the respondents further contended that the said vacation Judge had even gone to the extent of observing that the time limit of the deposit of the amount pursuant to the order dated 8/09/2016 had already expired on 20/10/2016 and in that context had not passed any orders on the application for the enlargement of time and granted liberty to the applicant to renew such request alongwith the application for seeking modification before the concerned Judge. The additional period of six weeks sought for by the applicant expired in December, 2016. The applicant could well have applied for the certified copy within time which it failed to do giving rise to the expiration of the period of six weeks for the deposit and the additional period of six weeks sought for by the applicant having expired in December, 2016. The application was therefore rendered infructuous and was otherwise not tenable and liable for dismissal.

Shri S.M. Usgaonkar, learned Senior Counsel for the applicant in reply adverted to the order passed by the vacation Judge dated 9/11/2016 pursuant to which he had afforded an opportunity to the applicant to move this Court for seeking the modification of the

order and that in the absence of any orders being passed on the application for the extension of time, the application was existing and tenable and therefore there was no basis in the case of the respondents to press for its dismissal.

4. I have heard both the learned Senior Counsels on the present application and that for the enlargement of the time. There was no dispute that the order in the Appeal From Order No.22/2015 was passed by this Court on 8/09/2016 pursuant to which the appeal filed by the respondents was dismissed confirming the relief of injunction in favour of the plaintiff/applicant. Nonetheless considering the factual matrix and that a substantial part of the consideration was yet to be paid to the respondents and that the applicant was secured by the order of injunction, was the applicant put to terms to deposit the balance amount before the Trial Court within six weeks from the date of the order. Admittedly, the said six weeks period expired on **20/10/2016** unlike the application for the modification and that for enlargement of time to make the deposit being filed a week later i.e. on 27/10/2016.

5. Admittedly, the applicant had not filed any review application and even otherwise it was nowhere his case that a review was maintainable. Rather Shri S.M. Usgaonkar, learned Senior Counsel for the applicant in fairness conceded that there was no question of

review as the applicant did not challenge the findings rendered by this Court and that he accepted the findings in the order under modification without any grievance. However, unlike his contention that he was not challenging the findings and that no review too was available, nonetheless a case was sought to be urged that the entire balance amount was not payable at the time of executing the agreement but it would be payable at the time of the execution of the Deed of Sale and hence the deposit of the entire balance consideration at this stage would be unjust and inappropriate and thereby seeking modification qua the deposit and restricting it to 10% of the total consideration. This aspect of the matter is not available to the applicant to canvass when admittedly the order passed by this Court has not been challenged nor any review sought thereof.

6. Besides the conduct of the applicant assumes relevance inasmuch as though the order was passed by this Court on 8/09/2016, an application for its certified copy was made only on 14/09/2016 and despite the copy being ready on 20/09/2016 and its copy being made available on 1/10/2016 no attempt whatsoever was made to seek for the enlargement of time to make such deposit within the period of six weeks from the date of the order. The applicant had also not sought for the modification of the order after the expiry of the period granted for making the deposit and

the application for modification was moved after the expiration of such period and on 27/10/2016. The conduct of the applicant does not stop at that and who had applied for the extension of time to make the deposit after the expiration of the six weeks time and which was not pursued even thereafter till the present application came to be heard for the modification of the order. Considering the time of six weeks from the date of the order, the application seeking enlargement of time by **six weeks** on its face had expired in December, 2016. Therefore considering the cumulative effect of the application for modification coupled with that for extension of time, and read with the order passed by the vacation Judge, no case whatsoever has been made out by the applicant for the modification of the order and much less to make the deposit of an amount equivalent to 10% of the total consideration or any fraction thereof.

7. i do not find any merit in this application for modification which is hereby dismissed. However, in the interest of justice and as the application for the extension of time has been pending, a last opportunity is granted to the applicant to make the deposit which he shall do within an extended period of four weeks from today.

NUTAN D. SARDESSAI, J.

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