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***IN THE HIGH COURT OF JUDICATURE AT BOMBAY***

***CIVIL APPELLATE JURISDICTION***

***CIVIL WRIT PETITION NO.10794 OF 2016***

Madhavlal N. Pittie

..Petitioner.

V/s.

M/s. Hotel Suresh & Ors.

..Respondents.

Mr.B.N.Shukla i/b. B.N.Shukla & Co. for the Petitioner.

Mr.G.S.Godbole with Ms.Shlesha Sheth i/b. FZB & Associates for  
Respondent Nos.1 and 3.

***CORAM : N.M.Jamdar, J.***

***DATED : 9 February, 2017***

**ORAL ORDER**

By this petition, the Petitioner / original-Plaintiff in R.A.E. Suit No.1161/5873 of 1980 seeks to challenge the order passed by the Appellate Bench of the Small Cause Court, Mumbai whereby the application taken out by the Petitioner below Exhibit 109 to take action of perjury against Respondent No.3 has been rejected.

2. Heard the learned counsel for the parties. A grievance is

made that when an application dated 19 June, 2000 was made by Respondent No.3 to set aside the ex-parte order passed in R.A.E. Suit No.1661/5873 of 1980, Respondent No.3 had styled himself as a partner of Respondent No.1 hotel M/s.Hotel Suresha. He submitted that, on that date Respondent No.3 was not a partner of Respondent No.1, which position is even admitted by him in his cross-examination and, therefore, by misleading the Court, Respondent No.3 has sought to set aside the ex-parte order. He submitted that both the Courts ought to have taken stringent view of the matter and should have taken appropriate action against Respondent No.3.

3. In the suit, ex-parte order which was passed on 29 August, 1983 was subsequently recalled. Respondent No.3 filed a written statement. Thereafter, the suit has proceeded. The learned counsel for Respondent No.3 has placed on record judgment and decree passed by the learned Small Cause Court Judge in R.A.E. Suit No.1661/5873 of 1980 dated 17 July, 2013, whereby the suit filed by the Petitioner is dismissed. It is informed that the appeal against this decision filed by the Petitioner is pending.

4. The question, therefore, is only whether the view taken by both the Courts that punitive action against Respondent No.3 is not warranted even though there might be some error on his part, is perverse. The consequence of allowing the application of the

Petitioner would mean punitive action against Respondent No.3. Unless there are cogent circumstances made out, the Court under Article 227 of the Constitution of India will not lightly reverse such concurrent finding leading to punishment. The learned counsel for the Respondent has drawn my attention to the Partnership Deed dated 22 September, 1983 between Bhaskar Shama Shetty and Respondent No.3. It relates to a hotel Central Bar and Restaurant also known Hotel Suresha, situated on the ground floor, Shivilal Motilal Mansion, Bellasis Road, Mumbai-8. Thereafter, there appears to be another reconstituted Partnership Deed between Respondent No.3 and Mrs. Udaya wd/o. Bhaskar Shetty dated 10 July, 1997. It appears that the Central Bar and Restaurant and the Central Coffee House had the same address as in the deed dated 22 September, 1983. If these deeds are considered, then, it cannot be said that Respondent No.3 has no concern whatsoever with Respondent No.1 hotel Suresha when the application was made on 19 June, 2000. In view of these documents, it cannot be said that Respondent No.3 was an absolute stranger so as to draw a conclusion that he had subverted the process of law. As regards the statement made by Respondent No.3 in the cross-examination wherein Respondent No.3 appears to have contradicted himself to the Partnership Deed, it is a matter of merit, for which the appeal filed by the Petitioner is pending. Therefore, these aspects will have to be considered as a part of merit of the challenge to the judgment and decree passed in R.A.E. Suit No. 1661/5873 of 1980. In these

circumstances, I do not find any case has been made out to reverse the view taken by both the Courts.

5. However, it must be clarified that I have taken the view only in the context of not taking punitive action against Respondent No.3 in view of the limited jurisdiction under Article 227 of the Constitution of India and it is not to be construed as reflection on the merits of the contention advanced by the learned counsel for the Petitioner in respect of the challenge of the Petitioner to the judgment and decree. It is needless to state that the appeal will be decided on its own merits. The writ petition is accordingly disposed of.

*(N.M.Jamdar, J.)*