

IN THE HIGH COURT OF BOMBAY AT GOA**WRIT PETITION NO.631 of 2018**

Gurdeep Singh Matreja
Major of age, resident of "C-2"
Nirmala Co-operative Housing Society
Behind Cine Lata
Margao-Goa .. Petitioner

Vs.

Smt. Iona F. Quadros Colaco,
w/o. Late Shri Harland Colaco
aged 62 years, resident of
"Patsy Villa", Don Bosco Road,
Fatorda, Margao-Goa. .. Respondent

Shri C. A. Coutinho, Advocate for the petitioner

Shri Sudesh Usgaonkar and Ms. R. Pereira, Advocates for the respondent.

CORAM :- C. V. BHADANG, J.

Date : 10th July, 2018

ORAL JUDGMENT :

Rule, made returnable forthwith. The learned Counsel for the respondent waives service. Heard finally by consent of parties.

2. The petitioner is challenging the order dated 26/10/2017 issuing a Non-Bailable Warrant (NBW) against the petitioner and subsequent order dated 20/03/2018 below Exh.D-

53, by which the Executing Court has refused to cancel the NBW.

3. The brief facts are that there is a decree passed against the petitioner and in favour of the respondent on 18/04/2011, directing the petitioner to handover the possession of Restaurant and Bar (suit premises) and to pay licence fee/ compensation as per the Agreement till the suit premises are actually vacated. According to the petitioner, the petitioner handed over the possession of the suit property to the respondent decree holder. However, there is a dispute as to the exact date of handing over of the possession of the suit premises by the petitioner to the respondent, which has a bearing on the amount of the licence fee/ compensation payable. The Executing Court had earlier issued warrant against the petitioner for non-payment of Rs.19,91,793/-, which was challenged by the petitioner before this Court. This Court, by an order dated 21/02/2015, had granted indulgence subject to the petitioner depositing an amount of Rs.10 Lakhs before the Executing Court and on a condition that the petitioner personally remains present for three hearings, after which the petitioner was granted liberty to seek relaxation from personal appearance. It is undisputed that the petitioner has deposited an amount of Rs.10 Lakhs before the Executing Court and had also attended the Executing Court for three hearings,

after which he sought relaxation from appearance, which was granted by the Executing Court on 01/08/2016 by an order below Exh.D-24. The record shows that after this, the petitioner was represented by his Advocate before the Executing Court for some dates. However, eventually, the petitioner and his Advocate absented from the proceedings with effect from 16/08/2017, as a result of which, the Executing Court, by an order dated 26/10/2017, has issued a NBW and has refused to cancel the same.

4. On hearing the learned Counsel for the parties, it appears that the matter before the Executing Court is pending for enquiry as to the amount, which is payable by the petitioner towards the licence fee/ compensation, which depends upon the date, on which the actual possession of the suit premises have been handed over by the petitioner to the respondent. Normally, in such circumstances, the personal appearance of the petitioner may not be necessary, unless the petitioner is required to be examined in connection with the said enquiry. However, Shri Coutinho, the learned Counsel for the petitioner, on instructions, states that henceforth, the petitioner shall punctually remain present before the Executing Court on the dates of hearing of the Execution proceedings and shall co-operate for completion of the enquiry on an early date. Considering the overall circumstances, I

find that this is a fit case, where the petition can be allowed, subject to certain conditions. Hence, the following order :

- (i) The petition is allowed.
- (ii) The impugned order is hereby set aside, subject to the petitioner depositing costs of Rs.25,000/- payable to the respondent before the Executing Court, within two weeks from today.
- (iii) The petitioner shall personally remain present on every date of hearing unless exempted by the Executing Court for compelling reasons.
- (iv) The parties shall appear before the Executing Court on 06/08/2018 at 10.00 a.m.
- (v) Rule is made absolute in the aforesaid terms.

C. V. BHADANG, J.

SMA