

IN THE HIGH COURT OF BOMBAY AT GOA**WRIT PETITION NO. 197 OF 2018**

Novidade F. Dias Petitioner
Versus
Durga Hotel, Thr. its Constituted
Attorney & Another Respondents

Mr. Preetam Talaulikar, Advocate for the Petitioner.

Mr. Joaquim Godinho, Advocate for the Respondent No. 1.

CORAM : C.V. BHADANG, J.

DATE : 11th February, 2019

ORAL ORDER:

Heard the learned Counsel for the parties.

2. By this petition, the petitioner is challenging the order dated 14.09.2016, passed by the Executing Court in Execution Application No. 50/2013.

3. The respondent no. 1 has obtained a decree against the respondent no. 2, which is pending execution in the aforesaid execution case. In First Appeal No. 47/1999, as condition of stay, this Court had directed the judgment debtor to furnish security. The petitioner, who is a third party had furnished a fixed deposit receipt of UCO Bank bearing no. 196946 for Rs.40,000/- as security. Subsequently, it appears

that respondent no. 2/ judgment debtor filed Miscellaneous Civil Application No. 631/2003, before this Court for substitution of his own fixed deposit receipt no. 74923 of the Mapusa Urban Co-operative Bank, Margao Branch in place of fixed deposit receipt no. 196946 of the applicant.

4. This Court passed the following order on 05.12.2003 in the said civil application:

“By this application, the Applicant prays that he may be permitted to substitute the Fixed Deposit Receipt No.196946 of United Commercial Bank, Margao by the Fixed Deposit Receipt No.74923 of Mapusa Urban Co-operative Bank, Margao Branch. The Applicant is permitted to file a proper application before the Trial Court for seeking relief. In the event such an application is filed, the learned Trial Court shall decide the same in accordance with law. Miscellaneous Civil Application No.631 of 2003 is disposed of in the above terms.”

5. It appears that subsequent to this, the present respondent no. 2 filed an application before the Trial Court for substitution of the deposit as aforesaid. It appears from para 4 of the reply dated 21.11.2013 of the respondent no. 1/deedee holder that accordingly, FDR No. 196946 of the applicant was

replaced by FDR No. 74923 of the respondent no. 2. Thus, from the reply, it appears that respondent no. 1 is not disputing that the FDR furnished by the applicant was replaced by a FDR of the respondent no. 2/judgment debtor.

6. In that view of the matter and considering the fact that the petitioner is not concerned with the dispute and is not a party to the decree, the petition has to succeed.

7. In the result the following order is passed:

ORDER

- (i) The petition is allowed.
- (ii) The learned Trial Court/Executing Court shall write to the concerned Bank for cancelling the endorsement made on FDR no. 911020 of the petitioner.
- (iii) This shall be subject to the liberty to the respondent no. 1/decreed holder to point out to the Executing Court that the security furnished by the respondent no. 2/judgment debtor is not sufficient, if so advised.
- (iv) If such an application is made to the Executing Court, the Executing Court shall pass appropriate order in accordance with law.

C. V. BHADANG, J.