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IN THE HIGH COURT OF JUDICATURE AT BOMBAY**CRIMINAL APPELLATE JURISDICTION****ANTICIPATORY BAIL APPLICATION NO. 124 OF 2019**

Manmohan Desraj Anand

.....Applicant

V/s.

The State of Maharashtra

.....Respondent

Mr. Abhishek Pungliya advocate for the applicant

Mr. N. B. Patil APP for the State

CORAM : NITIN W. SAMBRE, J.**DATE : JANUARY 16, 2019.****P.C.**

Heard the learned counsel for the applicant at length. Heard the learned APP.

2 In Crime No. 756 of 2018 registered with Yerawada Police Station, Pune for offence punishable under Sections 454, 380 and 448 of the Indian Penal Code, applicant is seeking pre-arrest bail.

3 The learned counsel for the applicant would urge that

custodial interrogation of the present applicant in the crime in question is not warranted for the reason, there exist a civil dispute between the applicant and the complainant. The property about which allegation of dispossession are made, since inception is in possession of the applicant being owner of the same. According to him, the complainant remained in permissive possession of the same in view of the terms of the agreement dated 15/02/2006. He would then urge that a civil dispute initiated by the applicant being Special Civil Suit no. 766 of 2007 is stayed pursuant to the order of this Court. According to him, the Arbitrator has already adjudicated the rights of the parties and that being so, it cannot be inferred that applicant has dispossessed the complainant and has taken over the possession.

4 *Per contra* the learned APP opposed the claim and submits that the act on the part of the applicant is contrary to the Agreement entered into. He sought rejection of the prayer for pre-arrest bail.

5 The rights between the parties i.e. applicant and the

complainant are governed by the terms of the Agreement dated 05/02/2006. Clause 1 of the said Agreement reads thus:

“1) The Owner shall give and the Hirers shall take on hire the conduct of the said business of running hotel/restaurant/permit room together with all the furniture, fixtures and fittings situated in the said premises at the property bearing No. 217, Vitoria Fortaleza, Kalyaninagar, Pune 411 014 together with all the effects, pertaining to and lying in the said premises belonging to the said owner (herein after referred to as “the said effects”) (and more particularly described in the Schedule II hereinunder written) from the ----- and shall give the said premises 217, Vitoria Fortaleza, Kalyaninagar, Pune 411 014 to the Hirer to use the said Business premise at for the purpose of carrying on the business of running Hotel/restaurant/permit room as from the -----, 2006 for a period of ten years”.

6 The status of the complainant is that of Hirer of the property and the Arbitration Award and the dismissal of the appeal of the applicant including that of pleadings in the Civil Suit initiated by the applicant does not make a case that the applicant continued in

possession of the Suit. In the wake of above, the claim of the applicant that he being owner of the property was in possession thereof cannot be inferred from the documents on record.

7 That being so, no case for grant of pre-arrest bail is made out. Application fails, stands rejected.

[NITIN W. SAMBRE, J.]