

IN THE HIGH COURT OF BOMBAY AT GOA

WP/195/2019

DILIP V. KOTHARI.,

..... PETITIONER

VS

MABEREST HOTELS PVT.
LTD.,

..... RESPONDENT

Mr. Venkatesh Nayak Salatry, Advocate for the Petitioner.

Mr. J. E. Coelho Pereira, Senior Advocate with Mr. Somnath B. Karpe, Advocate
for the Respondent.**CORAM: M. S. SONAK, J.****DATE : 6th July, 2021.****P. C.:**

Heard Mr. Salatry, the learned counsel for the petitioner and Mr. J. E. Coelho Pereira, the learned Senior Advocate, who appears along with Mr. S. Karpe, for the respondent.

2. Mr. Pereira, the learned Senior Advocate for the respondent points out that there is an appeal provided against impugned order, and, therefore, this petition may not be entertained.

3. In this case, the petitioner took out an application under Order 9 Rule 9 of C.P.C seeking restoration of the suit along with an application seeking condonation of delay. By the impugned order, the learned trial Judge has dismissed the application seeking condonation of delay. This dismissal, in effect amounts to dismissal of the petitioner's application under Order 9 Rule 9 of C.P.C seeking the restoration of the suit. As against this order, an appeal is

maintainable. Therefore, there is no necessity to entertain the present petition.

4. Since this petition is not entertained only on the ground that the petitioner has an alternate and efficacious remedy available, obviously, the petitioner will have the liberty to institute such an appeal. Further, if such appeal is indeed instituted by the petitioner, the appeal Court, will take into consideration the circumstance that this petition was filed on 10/1/2019 and remained pending in this Court till date.

5. This petition is accordingly disposed of with liberty as aforesaid. But, it is made clear that this Court has not adverted to the merits of the matter, and, therefore, all contentions of all the parties are left open.

M. S. SONAK, J.

Ap/-

MARIA
AURA
PEREIRA

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by MARIA AURA
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