

Santosh

**IN THE HIGH COURT OF BOMBAY AT GOA
MISC. CIVIL APPLICATION NO. 50 OF 2020
IN
SECOND APPEAL NO. 100 OF 2015**

SHITAL SITARAM PRABHU
NACHINOLCAR.,APPLICANT.

Versus.

DR. ULHAS G. P. NACHINOLCAR
AND ANR.,RESPONDENTS

Mr. Ajit R. Kantak, Advocate for the Applicant.

**Mr. Sudin Usgaonkar, Senior Advocate with Ms. Pooja Naik,
Advocate for the Respondents.**

CORAM : M. S. SONAK, J.

DATE : 8th December 2022

P.C. :-

1. The Applicant is the original Plaintiff before the Trial Court. One of the reliefs before the Trial Court was to declare the suit premises as the partnership asset. This prayer was declined by the Trial Court. However, the First Appellate Court has granted this relief. The Second Appeal is instituted by the Defendants, challenging the declaration/decreed by the First Appellate Court. The Appeal is admitted.

2. By this application, the Applicant (original Plaintiff) seeks the following reliefs:

a) That in case of lease/license, directing the Respondents to disclose on oath and then share the benefits derived from the SUIT SHOP by way of lease rent/license fee in the partnership profit sharing ratio;

b) That in case of conduct of business in the SUIT SHOP by the Respondents jointly or under any arrangement directing the Respondents to deposit before ns Hon'ble Court an amount of Rs, 50,000/(Rs. Fifty thousand only) per month on any date as may be specified by this Hon'ble Court, every month, till the disposal of the Second Appeal.

3. Mr. Usgaonkar, learned Senior Advocate for the original Appellants points out that the partnership as such, is no longer subsisting. But the declaration which is itself vulnerable, is only in respect of the premises. Therefore, the prayers made are entirely misconceived and may not be granted. He pointed out that similar prayers were in fact rejected by the Trial Court and have not been granted by the First Appellate Court.

4. Mr. Usgaonkar is, *prima facie*, justified in contending that the Applicant cannot claim any share for profits at this *prima facie* stage. However, despite the declaration by the First Appellate Court about the premises being a partnership asset, it is the Appellants, who are exclusively using the suit premises. Therefore,

if the Appeal is ultimately dismissed, some security must be afforded to the Applicant (original plaintiff).

5. Mr. Kantak points out that the premises are in the commercial heart of the city of Panaji *i.e.* opposite Hotel Rajdhani. They admeasure about 90 sq. metres. Considering this aspect, the original appellants are directed to deposit in this Court an amount of ₹20,000/- per month with effect from 1st February 2020, since this application was filed only on 20th January, 2020. Such, amount should be deposited on or before the 5th of each succeeding month, in this Court. Time limit for deposit of arrears shall be 3 (three) months from today. Once deposit, the amount should be invested by the Registry in a nationalized bank. These amounts will abide by the final orders in the Appeal.

6. Misc. Civil Application No.50 of 2020 is disposed of in the above terms.

M. S. SONAK, J.

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