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IN THE HIGH COURT OF BOMBAY AT GOA

WRIT PETITION NO.657 OF 2023

SINMIN HOTELS AND RESORTS PVT. LTDPetitioner.
THR. ITS DIRECTOR HARJEET SINGH

Versus

GREGORY BOTELHO AND ANR.Respondents.

Mr Rui Gomes Pereira, Advocate for the petitioner.
Mr C. Padgaonkar, Advocate for the respondent no.2(c).
Mr R. Menezes, Advocate for respondent no.1.

CORAM: AVINASH G. GHAROTE, J

DATE: 13th March 2024

P.C.:

1. Heard Mr Rui Gomes Pereira, learned counsel for the petitioner, Mr R. Menezes, learned counsel for respondent no.1 and Mr C. Padgaonkar, learned counsel for the respondent no.2(c).
2. The petition questions the judgment dated 17.1.2023 passed by the learned Revisional Court in Revision Application No.2/2022 whereby while allowing the revision, the order of the Executing Court dated 7.4.2022 below Exh.D-23, filed by the respondent no.1 herein, seeking to intervene on the ground that there was a lease in respect of one of the room on the first floor of the property in question in his favour which is dated 1.3.1966 and therefore created an independent right in favour of the respondent no.1, which was rejected by the

learned Executing Court, has been set aside and the revision was allowed.

3. The learned counsel Mr Pereira, for the petitioner, while assailing the judgment in revision, contends, that the Revisional Court could not have set aside the order of the Executing Court as the same was justified on account of absence of production of the document of lease dated 1.3.1966 and in the absence of identity of the property.

4. He further contends that learned Revisional Court has treated the revision as an appeal which was impermissible in law and the impugned judgment of the Revisional Court therefore cannot be sustained on this ground also.

5. Mr. R. Menezes, learned counsel appearing for respondent no.1 while supporting the revisional judgment contends that though the decree for eviction of the first floor in favour of the petitioner was of the year 1992 which has subsequently being confirmed and put to execution, however, the tenancy of the respondent no.1, vis-a vis one block on the first floor of the subject premises, was even prior thereto from 1.3.1966. It is further contented that documents were duly produced before the learned Revisional Court based upon which the impugned order remanding the matter back with the learned Executing Court to decide as per law was justified.

6. A perusal of the order of the Executing Court, indicates,

rejection of the objection is on two grounds first failure on the part of the respondent to place copy of the lease dated 1.3.1966 on record and second, the absence of description of the property.

7. In so far as plea for absence of description of the property is concerned it is contended by the respondent no.1 in his application that the portion of the first floor was leased out to his father.

8. The bailiff report while executing the warrant of possession in respect of the first floor property has delivered possession of two blocks, however in respect of one block it has been stated that it has been occupied by photography studio and since the occupant was not available possession of it could not be delivered. This would clearly indicate, that even the Executing Court was aware of the nature of the property, which was occupied by the photography studio which itself is claimed to be occupied by the petitioner under the terms of the lease.

9. Be that as it may, the agreement of leased dated 1.3.1966, has since then been placed on record with the Revisional Court. A copy of which is also before this court (page 83), a perusal of which, would indicate that lease was created in respect of a portion on the first floor for a photography studio commencing from 1.3.1966 for a period of three years, in which there is clause of renewal. The respondent no.1 contends, that possession under the said lease which was in favour of his father has continued and is with respondent no.1

even today. This being the position, it would be apparent that the respondent no.1 or for that matter his father, who were admittedly not party to the earlier eviction proceedings, prima facie would not be bound by the decree passed therein and therefore their right to occupy the premises in question i.e. block housing the photography studio, will have to be adjudicated and determined. I therefore, do not see any reason to interfere in the judgment passed by learned Revisional Court that too on the ground that contract of lease was not produced before the Executing Court, as mere absence of the production of the contract, which is now demonstrated to be in existence cannot do away with the rights of the parties thereto under which respondent no.1 claims to be in possession.

10. Petition therefore is without any merits and it is accordingly rejected and accordingly dismissed.

11. Considering that the decree is of the year 1992 the learned Executing Court shall decide the objection raised by respondent no.1 as early as possible and in any case, within a period of six months from today, on its own merits, uninfluenced by whatever has been stated in this order.

AVINASH G. GHAROTE, J.

VINITA VIKAS NAIK

 Digitally signed by VINITA VIKAS NAIK
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