



IN THE HIGH COURT OF BOMBAY AT GOA

WRIT PETITION NO.740 OF 2023

M/S. MABEREST HOTELS PVT. LTD.

With its registered office at 18th June Road, Panaji, Goa, represented in this Act by its Director, Shri Sahdevsinh Kiritsinh Zala, Businessman, Aged 42 years, Residing at Mehboob Appts., 3rd Floor, Wadle Bhat, Dr. Kesari Line, Taleigao, Caranzelem, North Goa, Goa – 403 002.

.....PETITIONER

v/s.

1. JAMMU AND KASHMIR
HANDICRAFTS (SALES & EXPORT)
CORPORATION)

A State Government undertaking with its registered office at Emporium Buildings, Residency Road, Srinagar, Jammu and Kashmir, India.

[Carried out amendment carried out as per order dated 30/11/2023]

Carrying on its business at:-

2. KASHMIR GOVERNMENT ARTS
EMPORIUM

Through its Manager,

Shri Gulam Mohammad Mir, Swami Vivekanand Road, Hotel Fidalgo, Panaji, Goa.

.....RESPONDENTS

Mr. Prasheen Lotlikar, Advocate for the Applicant.

CORAM: BHARAT P. DESHPANDE,J

DATED : 4th July, 2024

ORAL JUDGMENT:

1. Rule.
2. Rule is made returnable forthwith.
3. Heard Mr Lotlikar, learned Counsel for the Petitioner. Though the Respondents were duly served, none appeared.
4. Present petition is filed challenging two orders passed by the learned trial Court. The first order dated 12/01/2023 by which the application for recall of order dated 05/07/2022 closing plaintiff's evidence, came to be rejected. Similarly on the same date by a separate order passed in the roznama, the suit filed by the Plaintiff for eviction was dismissed for non-prosecution.
5. Mr Lotlikar appearing for Petitioner submits that the Plaintiff is a company whereas Respondent was a licensee of the premises belonging to the Plaintiff. After the expiry of license period with regard to the shop, the Respondent failed to vacate and handover possession of the suit premises to the Plaintiff. Accordingly, the suit was filed for mandatory and permanent injunction and /or eviction as well as mesne profits.

6. He submits that the suit was contested by Respondent/Defendant by filing written statement and thereafter issues were framed. The matter was posted for evidence however, the authorized representative of the Plaintiff due to some health issues was unable to step into the witness box.

7. Mr Lotlikar fairly admits that on the earlier occasion the evidence of the Plaintiff was closed however vide order dated 29/09/2020, such order was recalled on the condition of deposit of Rs.5000/- and accordingly the Plaintiff was allowed to lead evidence.

8. Mr Lotlikar submits that though such permission was granted, the representative of the Plaintiff failed to attend the said proceedings basically on health issues and an adjournment application was filed. The defendant objected to such adjournment and accordingly, the learned trial Court passed an order dated 05/07/2022, rejecting such adjournment application and accordingly closed the evidence of the Plaintiff.

9. The Plaintiff then filed an application for recalling of order dated 05/07/2022 by disclosing sufficient reasons however it was opposed by Respondent/Defendant.

10. The learned trial Court vide impugned order dated 12/01/2023 below Exh.34 rejected such application and on the same day dismissed the suit for non-prosecution.

11. Mr. Lotlikar would submit that since the premises are owned by the Plaintiff and the same are in illegal occupation of the Defendant, great prejudice would be cause to the Plaintiff, if the said orders are not recalled. He submits that there are some lapses on the part of the Plaintiff but same were explained and now the Plaintiff-Company has specifically appointed a person to look after the said suit and to lead evidence. He further submits that the Plaintiff is ready and willing to lead evidence as early as possible so as to dispose of the said suit on merit. He submits that even by awarding costs the suit be restored and the Plaintiff be allowed to lead evidence.

12. Though the Respondents were duly served, there is no appearance and contest from their side. It is admitted fact that the suit filed by the Plaintiff is of the year 2009. It is also a fact that till the impugned order was passed, the Plaintiff failed to step into the witness box and sufficient opportunity and adjournments were

sought from time to time. Accordingly, the orders passed by the trial Court are fully justified.

13. However, since the suit is filed for eviction on the ground that the Defendant was the licensee and inspite of expiry of the licence period, the Defendant is continuing in possession, it is necessary that the suit be decided on merits. The contentions of the Plaintiff that their witness was unable to attend the Court proceedings due to health reasons could be accepted, however, such restoration must be on substantial costs. The dismissal of the suit would certainly prejudice the rights and claims of the Plaintiff and thus in the interest of justice, one opportunity can be given to the Plaintiff to lead evidence and decide the suit on merits, however, subject to deposit of costs of Rs.25,000/- with the trial Court.

14. For the above reasons and only to grant an opportunity to the Plaintiff, both the impugned orders are quashed and set aside. The suit is restored to the file of the learned trial Court. The Plaintiff is permitted to lead evidence by filing the affidavit and making available the witness for cross-examination, within a

period of one month from today, subject to deposit costs of Rs.25,000/- with the trial Court.

15. It is made clear that if the Plaintiff failed to file affidavit and lead evidence within the above said time, the learned trial Court is free to pass orders for dismissal of the said suit.

16. Appeal stands disposed of in the above terms.

17. The parties shall appear before the trial Court on 22/07/2024.

BHARAT P. DESHPANDE, J.