



CNR No.GASGo2-002272-2019

Reg. Exe. Appln. No.28/2019/D

O R D E R below Exbt-D-18

**(Delivered on this the 21st day of the month of
November of the year 2023)**

Heard arguments. Perused.

2. By this application the Decree Holder seeks attachment and sale of shop premises number 13 and 13(1) admeasuring together about 64 sq. mtrs. and Shop/Office No. 14 admeasuring 32.00 sq. meters, all three situated on the Lower Ground Floor of the building named Mabai Hotel Complex, alongwith proportionate undivided share in the land under Chalta No. 1(part) of P.T.S. No. 232 of Margao City Survey wherein the building Mabai Hotel

Complex is being constructed. This shops bearing Shop No. 13, 13(1) and 14 in the building named Mabai Hotel Complex, alongwith the proportionate undivided share in the land are referred to as “Said Shops”.

3. It is stated that the said shops are owned by the Judgment Debtors No. 1 and 2 by virtue of Gift Deed dated 10.07.2018 which is registered with the Sub registrar of Salcete on 13.07.2018.

4. The present application is resisted by the Judgment Debtors on the ground that the property sought to be attached bearing Sy. No. 55/II of Village Colva is subject matter of RCS/578/2010/A and therefore, the property cannot be attached in the present execution proceedings till the title is clear.

5. It is pertinent to note that the Hon'ble High Court in the First Appeal had directed the Judgment Debtors to pay an amount of Rs. 29,75,000/- together with interest of 8% per annum from 21.12.2006 till its realization. The Judgment Debtors have not paid the decretal amount till date. The affidavit filed by the Judgment Debtors at Exbt-

D-12 states that they do not have any free hold assets to satisfy the decree. Per contra, on independent inquiry the Decree Holders have found that the said shops were gifted to the Judgment Debtors in 2018. It is pertinent to note although the Judgment Debtors submit that the said shops are subject matter of litigation in the aforesaid Suit No. RCS/578/2010/A, yet pending the lis the Gift Deed was executed in 2018. The Decree Holder has produced the Gift Deed with supports the claim of the Decree Holder that the said shops are owned by the Judgment Debtors by virtue of the Gift Deed. The Judgment Debtors on the other hand have not produced any documents to show that the said shops are subject matter of any litigation.

6. In terms of Section 60 of CPC there is no bar on attachment of the said shops. Order XXI Rule 54 of CPC gives the procedure for attachment and sale of immovable property. In terms of Rule 54 a prohibitory order has to be issued to the Judgment Debtors and general public preventing any transfer of the property or charge on it. The Judgment Debtors then have to attend court for deciding the terms of the proclamation of sale.

7. In the present case the Judgment Debtors have failed to show that the said shops cannot be attached and/or that they are not the owners of the said shops. Therefore, ground is made out by the Decree Holder to attach and sell the said shops in order to satisfy the decree. In the circumstances, the application is granted. The said shops as described in the schedule of the application stands attached and Judgment Debtors No. 1 and 2 or any other person acting on their behalf/ general public are restrained from transferring or charging the said shops in any way and from taking any benefits there under. The Judgment Debtors shall attend court on the next date of hearing for settling the terms of proclamation of sale. Issue warrant of attachment accordingly interms of Order XXI Rule 54 of CPC.

Pronounced in the open Court.

(Ashwini V. Khandolkar)
Civil Judge Junior Division
“D Court” Margao-Goa

Margao
Dated 21.11.2023
Ssd/*