

IN THE HIGH COURT OF BOMBAY AT GOA

SECOND APPEAL NO. 109 OF 2015

1. Mr. Oscar D'Souza,
of major age, businessman,
(since deceased through his
Legal representatives)
 - 1a. Carlene Agnelo D'Souza
son of Mr. Oscar D'Souza,
 - 1b. Oslina Esilda D'Souza,
daughter, both major,
r/o Carmarkhazan, Mapusa,
2. Ms. Merlyn D'Souza,
of major age, housewife,
businesswoman,
H.No.59,
Both residents of Kamar Khazan,
Mapusa, Bardez Goa. Appellants

V e r s u s

Mr. Sameer Karnik,
son of Madhav Karnik,
of major age,
Resident of Flat No. G-1,
Block -10, Phase -II,
Garden Center, Ansabhat Mapusa,
Bardez Goa 403 507 Respondent

Mr. Valmiki Menezes, Advocate for the appellants.

Ms. Gautami Amey Kakodkar, Advocate for the respondent.

Coram:- F. M. REIS, J.

Date:- 22nd July, 2016

ORAL JUDGMENT

Heard Mr. V. Menezes, learned counsel appearing for the appellants and Ms. G. Kakodkar, learned counsel appearing for the respondent.

2. Admit on the following substantial question of law :

Whether the learned Lower Appellate Court was justified to decree the suit filed by the respondent merely drawing a presumption under Section 118 of the Negotiable Instrument Act without examining whether the promissory note has been duly proved ?

3. Heard forthwith with the consent of the learned counsel.

4. Ms. G. Kakodkar, learned counsel waives service on behalf of the respondent.

5. During the course of the hearing of the above appeal, both the learned counsel have pointed out that in the meanwhile the appellants and the respondent have amicably settled their dispute and executed consent terms. The parties who are present in Court have

admitted the contents of the consent terms and have pointed out that they have voluntarily signed such consent terms. The learned counsel appearing for the appellants and the respondent respectively have identified the signatures of the appellants and the respondent on the consent terms. The appellants have amicably settled the claim of the respondent by paying a lump-sum amount to the respondent in full and final settlement of the claim in the suit. The respondent who is present in Court along with his Advocate has also admitted and acknowledges the receipt of the amount referred to in the consent terms. The consent terms are accepted and taken on record and marked 'X' for identification. The substantial question of law is answered accordingly.

6. In view of the above, I pass the following :

ORDER

(i) The appeal is partly allowed.

(ii) The impugned judgments passed by the learned Lower Appellate Court dated 26.06.2015 and the learned Trial Court dated 28.12.2001 are quashed and set aside.

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(iii) The suit filed by the respondent is decreed in terms of the consent terms marked 'X' for identification.

(iv) The appeal stands disposed of accordingly with no order as to costs.

F. M. REIS, J

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