IN THE HIGH COURT OF BOMBAY AT GOA

SECOND APPEAL NO. 14 OF 2014

1. Theodoro Jacob Fernandes,
major, s/o. Thomas Fernandes,
resident of House No.484,
Opposite Railway Station,
Guirdolim, Chandor, Salcete, Goa.

2. Paul Inacio Bento Fernandes,
major, s/o. Thomas Fernandes,
resident of House No.484,
Opposite Railway Station,
Guirdolim, Chandor, Salcete, Goa. …....... Appellants.

V/s.

Anant Gopinath Kesarkar,
major of age, businessman,
s/o. Late Gopinath Kesarkar,
resident of House No.F-2,
Gopinath Kesarkar Building,
Opposite Bank of India,
Station Road, Margao, Salcete,
Goa.403 601. …....... Respondent.

Mr. Ryan Da Piedade Menezes, Advocate for the appellants.

Mr. Sahish Mahambrey, Advocate for the respondent.

CORAM :- F.M. REIS, J.

Date : - 30 June 2017.

ORAL JUDGMENT :-

Heard Mr. Ryan Da Piedade Menezes, learned Counsel appearing for the appellants and Mr. Sahish Mahambrey, learned Counsel appearing for the respondent.

2. The above appeal challenges the Judgment passed by the Lower Appellate Court whereby the Judgment passed by the Trial Court was set aside and the suit filed by the respondent was partly decreed, directing the appellants to pay to the respondent a sum of Rs.2,50,000/- due on cheque No. 373219 dated 15.7.2006, along with simple interest thereon at the rate of 18% per annum from 15.7.2006 till final payment.

3. Mr. Ryan Menezes, learned Counsel appearing for the appellants submitted that the suit filed by the respondent was for recovery of the sum of Rs.5,50,000/-, with interest thereon at the rate of 18% per annum. It is further pointed out that the appellants filed written statement, *inter alia*, contending that as far as Rs.3,00,000/- are concerned, the appellants are free to withdraw the bank guarantee

as it expired on 23.6.2006. It was also contended that a cheuqe was issued in favour of respondent, but, however, the cheque was not returned though the amount was repaid, as such, it was denied that the appellants were liable to pay any amount to the respondent. The learned Trial Judge dismissed the suit filed by the respondent. The learned Counsel further points out that the respondent, thereafter, preferred an appeal before the Lower Appellate Court, which came to be partly allowed and a sum of Rs.2,50,000/- was ordered to be paid by the appellants. The learned Counsel further points out that the learned Judge failed to consider that the respondent has failed to establish that a sum of Rs.2,50,000/- due on cheque dated 15.7.2006 had not been paid to the respondent. The learned Counsel further points out that the appellants are not liable to pay any amount to the respondent, as the sum of Rs.2,50,000/- was duly paid and, as such, there is no case for any relief being granted to the respondent. The learned Counsel further submits that there is no contractual rate of interest and, as such, the learned Judge was not justified to direct payment of interest at the rate of 18% per annum.

4. On the other hand, Mr. Sahish Mahambrey, learned

Counsel appearing for the respondent submits that the learned Appellate Court has rightly decreed the suit. It is further pointed out that the cheque was dishonoured and, as such, the appellants were liable to pay the amount. The learned Counsel further points out that being a commercial transaction, interest has been rightly awarded by the learned Lower Appellate Court.

5. I have considered the submissions of the learned Counsel and I have also gone through the records. The Lower Appellate Court, upon appreciating the evidence on records, has noted that the burden was on appellants to prove that they had paid the amount of Cheque No.373219 of a sum of Rs.2,50,000/-. The learned Judge found that there was no material produced by the appellants to establish that any such amount was paid to the respondent. The cheque was drawn by the appellants upon their signatures and as such, the presumption under Section 118 of the Negotiable Instruments Act, 1881 would draw in favour of the respondent herein. The learned Judge as such found that as the subject-cheque had been dishonoured and there was no material on record to show that the cheque amount was paid to the respondent, the appeal preferred by the respondent was partly allowed and a direction was issued to pay the said amount of Rs.2,50,000/-. Mr.

Menezes, learned Counsel appearing for the appellants was unable to point out any perversity in the said finding as the execution of the cheque has not been disputed. As such, there is no question of interference in the Judgment of the Lower Appellate Court to that effect.

6. The only aspect which remains to be considered is the grant of interest at the rate of 18% per annum. On such ground, **admit** on the following substantial question of law :

> Whether the Lower Appellate Court was justified to fix the interest at the rate of 18% pr annum from 15/07/2006 ?

Learned Counsel appearing for the respondents waives service. Heard forthwith by consent.

7. On perusal of the records, I find that there was no notice to the appellants to pay interest claimed by the respondent. The records also reveal that there was no contractual rate of interest. In such circumstances, the interest payable on such payment would be in terms of the provisions of Section 34 of the Code of Civil Procedure. The amount which was paid was not shown to be for commercial purpose.

In such circumstances, I find that a reasonable rate of interest would be at the rate of 10% per annum, considering the prevailing lending rate of interest at the relevant time.

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

O R D E R

(I) The appeal is partly allowed.

(II) The impugned Judgment and Decree passed by the Lower Appellate Court stands modified and the amount payable by the appellants to the respondent of the sum of Rs.2,50,000/- as directed will be with interest at the rate of 10% per annum from the date of issuing the notice dated 24/04/2009 upto actual payment, within six months from today.

(III) In case of default in payment of such amount within the said period or part thereof, the appellants are directed to pay interest at the rate of 18% per annum from the date of default upto payment.

(IV) The appeal stands disposed of accordingly.

(V) Decree to be drawn accordingly.

F.M. REIS, J.

ssm.