

IN THE HIGH COURT OF BOMBAY AT GOA

CRIMINAL MISC. APPLICATION NO. 273 OF 2018

IN

STAMP NUMBER MAIN NO. 1631 OF 2018

THE BICHOLIM MAHILA URBAN CO-OP.
CREDIT SOCIETY LTD., REP. BY ITS
AUT. REP., SANJAY G. PARMEKAR.

... Applicants

Versus

VIDDYA DNYANESHWAR NAIK GOLTEKAR
AND ANR.

... Respondents

Shri Deepak Gaonkar, Advocate for the applicants.

Shri P. Sawant, Advocate for the respondent No.1.

Coram:- NUTAN D. SARDESSAI, J.

Date:- 16th April 2019

ORDER:

Shri Deepak Gaonkar, learned Advocate submitted that the cheque amount was ₹7,17,000/- as on May,2015. The respondent No.1 borrowed five Gold Loans from the applicants in 2015 which amounted to ₹3,89,640/- and with the interest accrued thereon the same amounted to ₹7,17,000/- as on the date of the issuance of the cheque. Although one of the gold loans was for the amount of ₹88,000/, the Demand Promissory Note was signed by the

respondent No.1 alongwith the guarantor. The legal notice was issued in which the respondent No.1 had not at all denied her liability nor disputed the issuance of the gold loan in her favour. The learned JMFC however went off at a tangent while passing the impugned judgment and held that the said loan account was not connected with the respondent No.1 and she could not be saddled with the said liability. This was a fit case to grant leave to appeal since the impugned order was fraught with illegality.

2. Shri P. Sawant, learned Advocate for the respondent No.1 on the contrary submitted that the cheque amount was not showing the dues of the respondent No.1 as on the date of the issuance of the cheque. The loan Account D-15 was not signed by the respondent No.1. On his part he placed reliance on the statement of the applicant's witness and otherwise submitted that there was no infirmity with the judgment under challenge.

3. i have considered the submissions of both the learned Advocates and on a consideration of the same, it is apparent that the learned JMFC had lost track of the issue involved and that there was

no denial of the contents of the statutory notice by the respondent No.1. There is a triable issue involved in the matter and the same requires determination on merits by this Court. It is apparent that the impugned judgment is also not in consonance with the case as set out by the parties. In view thereof, leave is granted to the applicant to file the appeal. The application accordingly stands disposed off. The Registry to register the appeal. Direction to the learned JMFC to issue warrant against the respondent No.1 under Section 390 CrPC.

NUTAN D. SARDESSAI, J.

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