

IN THE HIGH COURT OF BOMBAY AT GOA
CIVIL REVISION APPLICATION NO.40 OF 2018

Mr. Aldino Santos Braganza,
Aged about 68 years, son of
Late Dr,. Armando Santos Braganza,
r/o. House No.222, Mazalwaddo,
Assagao,Bardez-Goa.

... Applicant

V e r s u s

1. State Bank Of India,
Constituted under
State Bank of India Act 1955,
Having its Head Office at Mumbai,
Duly represented by its Branch Manager,
Mapusa Branch, Vaishya Bhuvan,
Mapusa, Bardez-Goa.

2. Mrs. Merle Santos Braganza,
Aged about 55 years,
daughter of Sales Freitas,
Teacher, r/o. Verla, Parra,
Bardez-Goa.

... Respondents

Mr. J. Godinho, Advocate for the Applicant.

Mr. John A. Lobo, Advocate for the Respondent no.2.

Coram :- C. V. BHADANG, J.

Date :- 29th March, 2019.

ORAL JUDGMENT

1. Admit. Mr. Lobo, the learned Counsel for the second respondent, who alone is the contesting respondent, waives service. Heard finally by consent of parties.

2. On hearing the learned Counsel for the parties and on perusal of the impugned order dated 12.10.2018, I am constrained to state that the order is not at all satisfactory. The application filed by the applicant for rejection of the plaint and the reply filed by the second respondent opposing the same, raised several grounds which did not find consideration in the impugned order. That apart, the observations in para 3 of the impugned order that the Special Leave Petition filed by the second respondent-wife is pending before the Supreme Court is also factually not correct. In the reply filed by the second respondent itself it is mentioned in para 4 that the SLP was decided on 22.07.2015. The impugned order does not show that there is any consideration on the aspect of the applicability of the provisions of Articles 1117, 1118 and 1219 of the Portuguese Civil Code on which reliance was placed on behalf of the applicant. In the reply, the second respondent had denied that these provisions apply.

3. In such circumstances, it is expected of the Trial Court to consider and record a finding as to whether the provisions indeed apply or not. The impugned order is completely silent on this aspect. In such circumstances, there is no other option than to remit the application back to the learned Trial Court for

deciding it afresh, on its own merits and in accordance with law.

4. In such circumstances, the civil revision application is partly allowed. The impugned order is hereby set aside. The application at exhibit D-29 is restored back to the file of the Trial Court for deciding it afresh on its own merits and in accordance with law.

5. In the circumstances, there shall be no order as to costs.

C. V. BHADANG, J.

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