

IN THE COURT OF THE HON'BLE DISTRICT JUDGE,
SOUTH GOA, AT MARGAO

Regular Civil Appeal No. 62/2022/

LNR NO: GAS 4010011992022

1. MR. NILESH JANARDHAN RAIKAR,

Director of Kamakshi Forex Pvt. Ltd,

Son of late Janardhan Raikar,

Aged about 46 years,

Resident of H. No. 447,

Nagwaddo, Betalbatim,

South Goa, Goa.

Presented on 15.10.2022
RCA/606/ 88
2022. Sheristedar

2. MRS. NILIMA RAIKAR,

Wife of Mr. Nilesh Raikar,

Aged about 40 years,

Resident of H. No. 447,

Nagwaddo, Betalbatim,

South Goa, Goa.

3. MRS. REKHA J. RAIKAR,

Widow of late Janardhan Raikar,

aged about 73 years,

Resident of H. No. 447,

Nagwaddo, Betalbatim,

South Goa, Goa.

.....Appellants

V/s

1. MR. JOAO ANDRE DA COSTA

Son of late Vincent Da Costa,

aged about 83 years,

Resident of H. No. 116,

Novangully, Varca,
 Salcete, Goa.

2. MR. CLIF VITO DA COSTA

Son of Mr. Joao Andre Da Costa,
 Aged about 51 years,
 Resident of H. No. 116,
 Novangully, Varca,
 Salcete, Goa.

3. MR. CRISTOFER DIOGUINHO D'COSTA,

Son of Mr. Joao Andre Da Costa
 Aged about 42 years,
 Resident of H. No. 116,
 Novangully, Varca,
 Salcete, Goa.

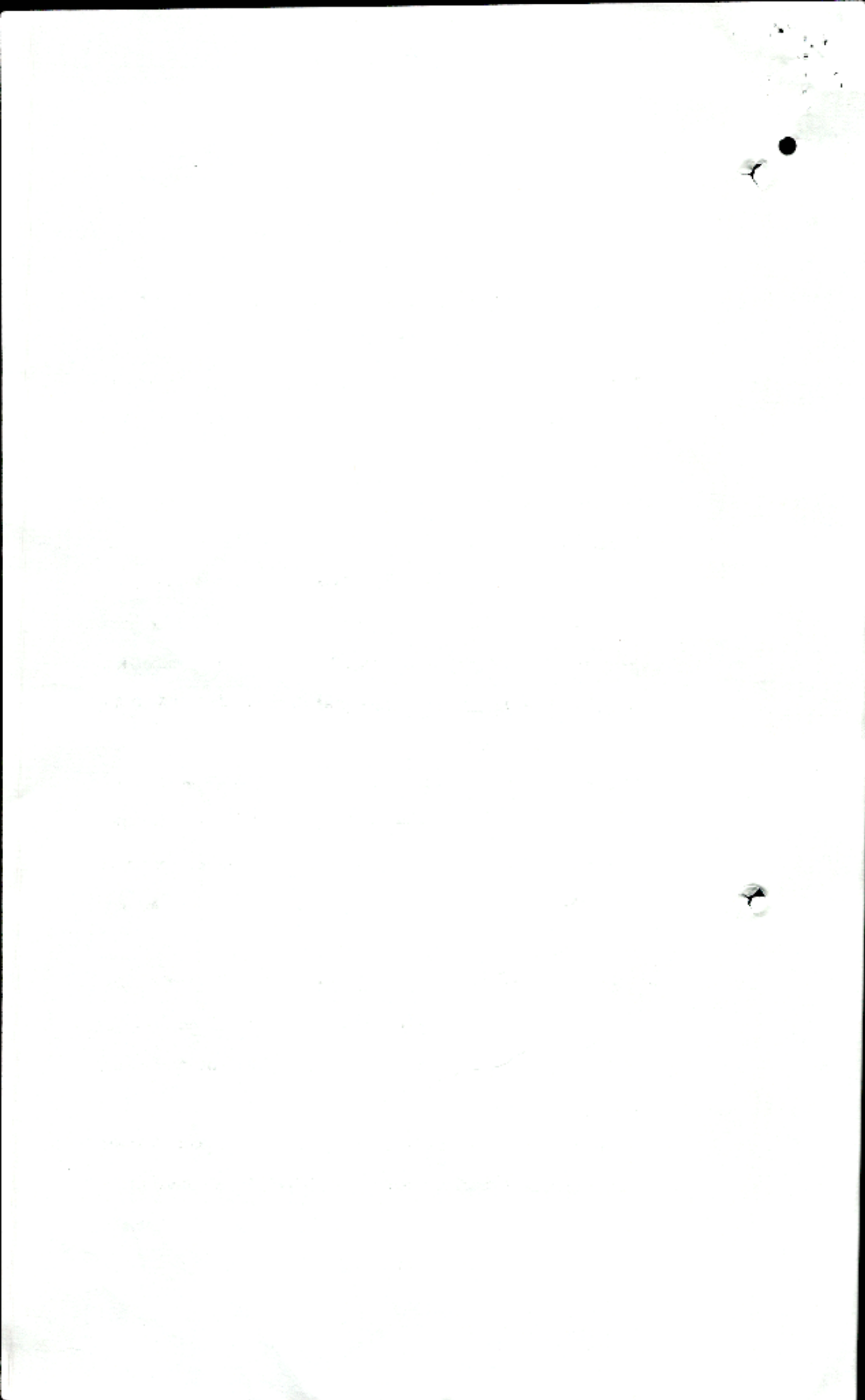
.....Respondents

**APPEAL UNDER SECTION 96 OF THE CODE OF CIVIL
 PROCEDURE AGAINST THE JUDGMENT AND DECREE
 DATED 05/09/2017 PASSED BY THE CIVIL JUDGE
 JUNIOR DIVISION AT MARGAO, GOA IN REGULAR CIVIL
 SUIT NO. 248/2016/F.**

MAY IT PLEASE YOUR HONOUR:

The Appellants most respectfully states and submits as under:

1. The Appellants herein have filed the present Regular Civil Appeal against the impugned Judgment and Decree dated 05/09/2017 passed by the Hon'ble Court of Civil Judge Junior Division, at Margao, Goa in Regular Civil Suit No. 248/2016/F. The Appellants herein were the Defendants and the Respondents herein were the Plaintiffs in the said proceedings.



**CASE OF THE RESPONDENTS BEFORE THE HON'BLE
COURT OF THE CIVIL JUDGE JUNIOR DIVISION, AT
MARGAO.**

2. The Respondents had filed this suit against the Appellants seeking Recovery of money under Order XXXVII of CPC. It is the case of the Respondents that, they had exchanged their foreign currency (US\$) in Appellants Office operating at Comba, Margao, Goa. The Respondent No. 1 deposited 2500 US\$ i.e. an amount of Rs. 1,72,000/-, The Respondent No. 2 deposited 2500 US\$ i.e. an amount of Rs. 1,72,000/-, and the Respondent No. 3 deposited 5000 US\$ i.e. an amount of Rs. 3,44,000/-, in Appellants company at the rate of Rs. 68.80 for 10,000/- US Dollars.
3. That towards the payment of the said amount on the said rate the Applicants had issued the Cheques in favour of the Respondents. However, the same were returned dishonoured when the Respondents had presented the cheques for payment with their bankers.
4. Accordingly, The Respondents filed the said Suit for Recovery of Money directing the Appellants to pay the amount of Rs. 6,88,000/-(Rupees Six Lakhs Eighty Eight Thousand Only) along with an interest @ 16% p.a.
5. That the Hon'ble Court of Civil Judge Junior Division, Margao vide Judgment and Decree dated 05/09/2017, had partly decreed the suit and directed the Appellants to pay to the Respondents an amount of Rs. 6,88,000/-(Rupees Six Lakhs



Eighty Eight Thousand Only) along with an interest @ 12% per annum from 08/08/2016 till actual payment.

6. The Appellants herein, were never served with the Summons in respect of the Said proceedings before the Hon'ble Court of Civil Judge Junior Division, Margao.

7. That as per the Bailiff Report dated 31/08/2016, it was read as follows:

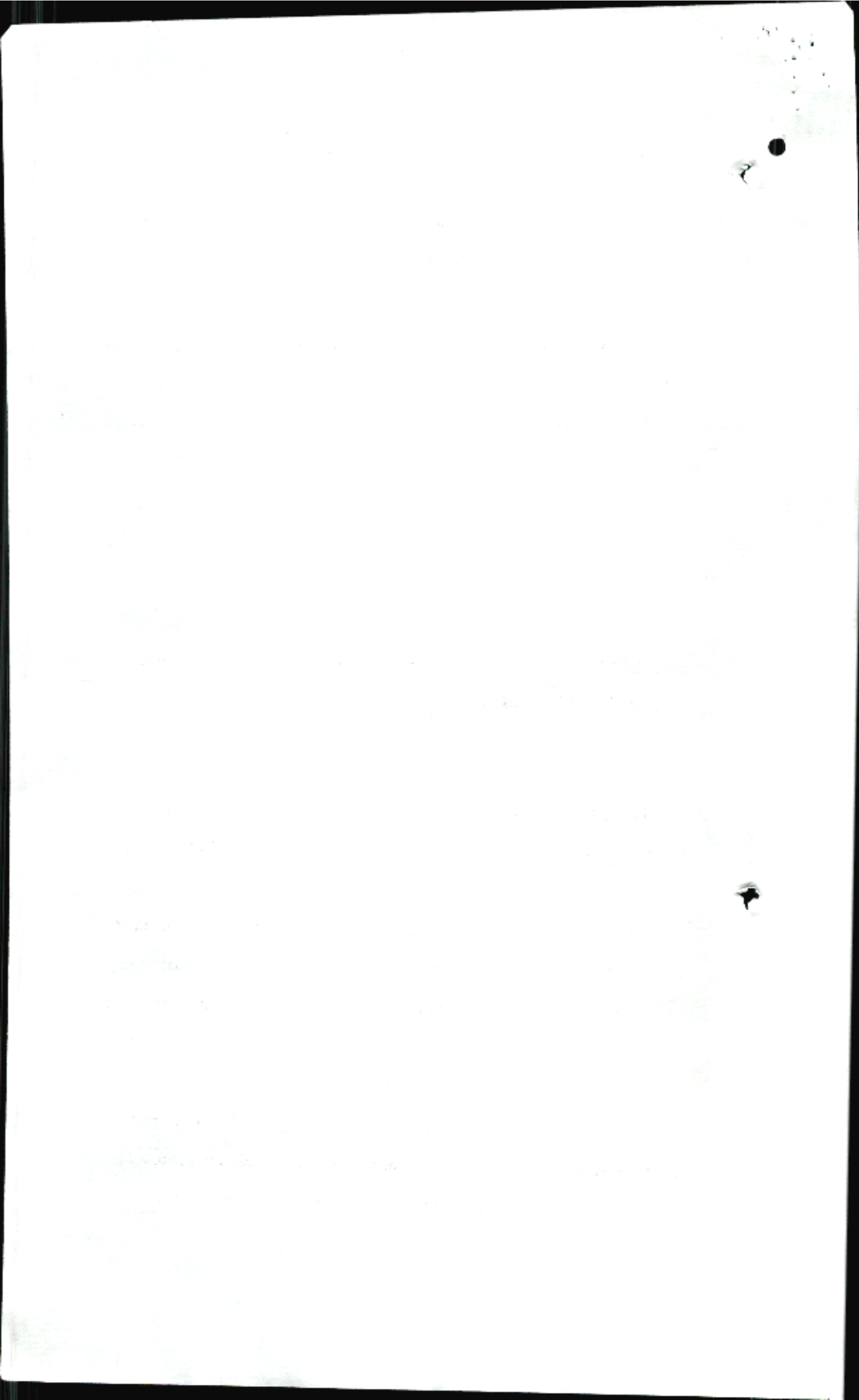
"This is to certify that, I have visited at Sheesh Mahal Building behind Loyola School to serve summons on Defendant No.1 and 2 but office of said defendants found closed with lock. I have also could not serve them summons by affixation as I have requested local people of that locality to signatures as witness for affixation. But nobody is ready to signature witness.

Hence I am returning the summons of Defendant No.1 and 2 are unserved".

8. Further, as per the Roznama dated 27/10/2016, The Appellants herein were served by affixation. Accordingly, in the next date of hearing i.e on 22/11/2016, the Appellants herein were marked ex-parte.

9. The office address of the Appellants which is shown in the cause title was sealed by the Economic Offences Cell from 10/04/2016 and such premises are sealed till date.

10. The Appellants came to know about the impugned Judgment and Decree only when they were served in execution proceedings which is filed by the Respondents bearing Regular Execution Application No. 94/2017/E, which is pending before the Civil Judge Junior Division, at Margao. The said notice in



execution proceedings were served in the court premises wherein the Appellants had appeared in criminal cases pending against them.

11. Aggrieved by the impugned Judgment and Decree, the Appellants has prefer the present Appeal, inter alias, on the following grounds, which are taken without prejudice to each another:-

GROUND OF APPEAL

A

The Hon'ble Court of Civil Judge Junior Division has passed the impugned Judgment and Decree in an arbitrary manner without application of judicial mind.

B

The Hon'ble Court of Civil Judge Junior Division failed to appreciate the fact that these Appellants were never served in the said Civil Suit.

C

The Hon'ble Court of Civil Judge Junior Division has failed to appreciate the fact that the Respondent herein have not produced any documentary evidence to justify that they had invested any amounts with the Appellant herein.

D

The Hon'ble Court of Civil Judge Junior Division failed to appreciate that the summons sent to the Appellants at the address mentioned in the cause title were never served by them as the premises of the

Appellants were sealed and locked by the Economic Offences Cell and thereafter by the CBI.

E

The impugned Judgment and Decree passed by the Hon'ble Court of Civil Judge Junior Division is patently illegal and contrary to law.

F

The impugned Judgment and Decree passed by the Hon'ble Court of Civil Judge Junior Division is unreasonable, perverse and opposed to all canons of equity, good conscience and fair play.

G

Such other and further grounds that may be urged at the time of hearing and arguments of this present Appeal.

12. The impugned Judgment and Decree challenged in this Appeal is dated 05/09/2017. That for the first time, these Appellants came to know about the impugned Judgment and Decree on 15/03/2020 after receipt of the said notice in execution proceedings.
13. That due to the ongoing Covid-19 Pandemic, the Appellants could not inspect the file and obtain Certified Copies of the same.
14. The Certified Copies were applied on 03/04/2021 and the same was received on 09/08/2021. Hence, there is a delay in filing the present Appeal and accordingly, the Appellants have filed along with the present Appeal an application for condoning the delay in filing the present Appeal.
15. The Original Suit was valued at Rs. 6, 88,000/- for the purpose of Court fee and jurisdiction. Hence, this Hon'ble Court has

jurisdiction to try and entertain the present Appeal and the appropriate Court fee of Rs. 18,430/- is paid herewith.

16. The Appellants have not preferred any appeal against the impugned Judgment in any other Court.

PRAYER

It is therefore, prayed before this Hon'ble Court:

- (a) The Records and proceedings of the Hon'ble Court of Civil Judge Junior Division, Margao in Regular Civil Suit No. 248/2016/F be called for;
- (b) The Impugned Judgment and Decree dated 05/09/2017 passed by the Hon'ble Court of Civil Judge Junior Division, Margao in Regular Civil Suit No. 248/2016/F be set aside, thereby dismissing the Suit.
- (c) Such other Order as this Hon'ble Court may deem fit and proper in the interest of justice.

Margao

Date: 21/09/2021

MR. NILESH JANARDHAN RAIKAR

(The Appellant No. 1)

MRS. NILIMA RAIKAR

(The Appellant No. 2)

MRS. REKHA J. RAIKAR

(The Appellant No. 3)

EXAMINED AND REGISTERED

UNDER No. Regular Civil Appeal No: 62/2022

DATED: 15.10.2022

↓
Asstt. Sheristadar
(By order of the Court)

Made over to the Court
District Judge and Addl. Sessions Judge - FTC-2
for its disposal

Principal District & Sessions Judge

South Goa, Margao

Dated: 15.10.2022

Ishtad

Issue notice to Respondents

2/10 17/11/22 at 2:30 pm

Althocar
(For Mayo)

While granting the
application for condonation
of delay OMA 106/21 vide order
dated 29/9/22, it was made clear that
the parties should not seek unnecessary
adjournments while deciding this appeal.
Today for the third time Appellant seeks
an unnecessary adjournment as "he has
so many cases against him." adjournment
is rejected. Appeal coming up for
arguments on next stands dismissed for
default. Althocar (For Mayo) 17/11/23