

**IN THE HIGH COURT OF BOMBAY AT GOA**

SECOND APPEAL NO. 30 OF 2014

MUNI RAJ

... Appellant

Versus

NARAYAN KRISHNA MALWANKAR AND  
ANR.,

... Respondents

Shri Vishnuprasad A. Lawande and Ms. P. Kaur, Advocates for  
the appellant.

Coram:- C. V. BHADANG, J.

Date:- 16th February 2018

P.C.

Heard Shri Lawande, the learned Counsel for the appellant.  
None for the respondents, though served.

2. This Second Appeal is admitted on the following substantial  
questions of law :

(i) Whether the finding by the Lower Appellate Court that the  
appellant was not ready and willing to perform his part of the  
contract only on account of there being a shortfall of Rs.50,000/-  
in so far as the payment agreed to be made under clause (2) of  
the agreement is concerned, is perverse ? Incidentally, whether  
the said condition stood modified by the money receipt Exh.22 ?

(ii) Whether the Courts below ought to have drawn adverse inference against the respondents for not having entered into the witness box, to substantiate their defence ?

(iii) Whether the First Appellate Court was in error in invoking the provisions of Article 1156 of the Portuguese Civil Code in the absence of any pleadings or proof that the respondents/defendants were governed by the Portuguese Law and were married under the Communion of Assets ?

(iv) Whether the discretion exercised by the Courts below refusing to grant specific performance can be said to be perverse in the facts and circumstances of the case ?

C. V. BHADANG, J.

SMA