

IN THE HIGH COURT OF BOMBAY AT GOA

LD-VC-OCW-44-2020

Nelson Felix Jacques @
Nelson Felicio Jacques

...Appellant

v/s.

Martins Cardozo @ Martines Cardozo

...Respondent

Shri Ryan Menezes, Advocate for the appellant.

Coram:- NUTAN D. SARDESSAI, J.

Date :- 30th June,2020

P.C.:

Heard Shri Ryan Menezes, learned Advocate for the appellant.

2. Admit on the following substantial questions of law:

(I) Whether in light of the respondent's admission that he required the papers of the suit car to register it with the Holiday Inn Taxi Association and the appellant's unshaken evidence that the amount of ₹60,000/-, as a condition precedent to delivery of possession of the car, was not paid by the respondent no.2 to him, the finding of the Hon. Court that the fact of the papers

and keys of the subject car to the respondent, indicated that an amount of ₹40,000/- was paid by the respondent to the appellant is erroneous and perverse, and vitiated on account thereof?

(II) Whether the impugned Decree and original Decree are vitiated by the error of the Hon. Courts below, in proceeding on the basis of surmise and conjecture, to discard, as a ploy, the Appellant's evidence that the subject car was stolen from his garage, without payment of the amount of ₹60,000/- as a condition precedent to delivery of possession thereof and to conclude that delivery thereof was voluntary?

(III) Whether the failure of the Hon. Lower Appellate Court frame proper points for determination, following the mandate of Order XLI, Rule 31 of the Code of Civil Procedure, and in light of the findings in the original Decree and grounds raised to impugn them,

misdirected its consideration of the record and its findings, and vitiates the impugned Decree?

NUTAN D. SARDESSAI, J.

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