Niti

IN THE HIGH COURT OF BOMBAY AT GOA

FIRST APPEAL NO.17 OF 2022,
AND
FIRST APPEAL NO.38 OF 2022
WITH
CIVIL APPLICATION NO.2302 OF 2024(F)
AND
MISC. CIVIL APPLICATION NO.2226 OF 2025(F)

FIRST APPEAL NO.17 OF 2022

SIMA HOTES & RESORTS LTD.
A Limited Company duly incorporated
Under the Companies Act, 1956,
Having its registered office at 9,
New Marine Lines,
15, Jas Ville, Fourth Floor,
Opposite Liberty Cinema,
MUMBAI – 400 020. ...APPELLANT

Versus

DUGAL PROJECTS DEVELOPMENT
COMPANY PRIVATE LTD.
A Private Limited Company,
Incorporated under the Companies
Act, 1956, Having its registered office
at Mohatta Bhavan, Fourth Floor, 10,
Dr E. Moses Road, Mumbai – 400 018. ...RESPONDENT

AND
FIRST APPEAL NO.38 OF 2022
WITH
CIVIL APPLICATION NO.2302 OF 2024(F)

ALCHEMIST ASSET
RECONSTRUCTION COMPANY
LTD.,
D-54 (First Floor), Defence Colony,

New Delhi, South Delhi,
Delhi – 110 008.
Represented herein by its duly
authorised signatory
Shri Navneet Kumar,
Of 28 years of age. ...APPELLANT

Versus

1. SIMA HOTELS & RESORTS
LTD. Having its registered office at:
9, New Marine Lines,
15, Jas Ville, 4th Floor,
Opp. Liberty Cinema,
Mumbai – 400 020.

2. Dugal Projects Development
Company Private Limited,
Having its registered office at:
Mohatta Bhavan, 4th Floor,
10, Dr E. Moses Road,
Mumbai – 400 018. ...RESPONDENTS

AND
MISC. CIVIL APPLICATION NO.2226 OF 2025(F)
IN
FIRST APPEAL N0.38 OF 2022

DUGAL PROJECTS DEVELOPMENT
COMPANY PVT. LTD.
Having its registered office at:
Mohatta Bhavan, 4th Floor,
10, Dr E. Moses Road,
Mumbai – 400 018. .... APPLICANT

Versus

ALCHEMIST ASSETS
RECONSTRUCTION
COMPANY LTD.

D-54 (First Floor), Defence Colony,
New Delhi, South Delhi,
Delhi – 110 008.
Represented herein by its
duly authorised signatory
Shri Navneet Kumar,
Of 28 years of age. .... RESPONDENTS

Mr Manoj Munshi, Senior Advocate (through V.C.) with Mr Vishwadh Sardessai, Advocate for the Appellant in FA No.17/2022 and Respondent No.1 in FA No.38/2022.

Mr Parag Rao with Mr Karan Batura, Mr Akhil Parrikar and Mr J. Karn, Advocates for the Appellant in FA No.38/2022.

Mr Vikram Saini (through V.C.), Advocate for Respondent in FA No.17/2022, Respondent No.2 in FA No.38/2022 and for Applicant in MCA No.2226/2025(F).

CORAM : BHARATI DANGRE &
ASHISH S. CHAVAN, JJ.

DATE : 3rd SEPTEMBER 2025

ORAL JUDGMENT : *(Per Bharati Dangre, J.)*

1. The judgment dated 03.08.2018 passed by the Adhoc IInd Additional Senior Civil Judge at Margao in Special Civil Suit No.18/2012/II is the subject matter of the two First Appeals before us; the first being First Appeal No.17/2022 filed by the plaintiff Sima Hotels & Resorts Ltd. and the second being First Appeal No.38/2022 instituted by the Alchemist Asset Reconstruction Company Ltd.

Both the appeals being placed before us a common paperbook has been prepared.

We have heard learned Senior Counsel Mr Munshi for the appellant in First Appeal No.17/2022, learned counsel Mr Saini appearing for the respondent in the said appeal, i.e. Dugal Projects Development Company Private Ltd. (DPDCPL) and Mr Parag Rao appearing for Alchemist Asset Reconstruction Company Ltd.

2. From the perusal of the appeals which has raised the challenge to the judgment dated 03.08.2018, it is evident to us that the special suit is filed by Sima Hotels & Resorts Ltd., seeking a declaration that the Lease Deed dated 25.11.1987 in respect of the suit property situated at Village Agonda, Canacona Taluka, is subsisting in favour of the plaintiff Company and a further declaration that the plaintiffs are entitled to purchase the suit property in terms of Clause 7(b) of the said Lease Deed by making payment not exceeding Rs.180 lakhs.

The plaintiff Company also sought a declaration that it is entitled to take over the possession of the suit property from the Court Receiver, Debt Recovery Tribunal, upon payment of the suit amount and pendent lite interest as may be determined by the DRT.

3. In the said suit, the learned Trial Judge determined the following points for consideration:

1. Whether the Appellant proves that the Lease Deed dated 25.11.1987 in respect of the suit property is still subsisting in favour of the Appellant Company?

2. Whether the Appellant proves that the Appellant Company is entitled to purchase the suit property in terms of Clause 7(b) of the Lease Deed dated 25.11.1987?

3. Whether the Appellant proves that the present suit is filed within limitation?

4. Whether the Financial Institutions are proper and necessary parties to the present proceedings?

Admittedly, the appellant in First Appeal No.38/2022 was not a party to the said proceedings, it being an Asset Reconstruction Company, who by three distinct registered Deeds executed between 2014 to 2017 from IFCI, IDBI and ICICI, had taken over the debts, thereby becoming a sole and exclusive lender and the mortgagee of the subject property.

4. While determining the lease between the plaintiff and the defendant in the Special Civil Suit filed for declaration, the Trial Judge answered the first issue against the plaintiff as it specifically observed that the plaintiff ought to have sought for a declaration that the letter dated 31.01.1991 of the defendant terminating the lease was bad in law and the Lease Deed is subsisting. On the other hand, recording that the plaintiff had directly sought a declaration without pleading on what basis and under what circumstances, the said declaration is sought, the conclusion that was drawn by the learned Judge was that the plaintiff is not entitled for such a declaration. Since the first point was answered in the negative, it also refused to grant relief in favour of the plaintiff as regards its entitlement to purchase the suit property in terms of clause 7(b) of the Lease Deed dated 25.11.1987.

5. As far as the fourth issue for determination, as to whether the financial institutions were proper and necessary parties to the said proceedings, it was answered in the affirmative by specifically referring to the relevant clauses of the Lease Deed at Exhibit C-30 and specifically clause no.7(b), which contemplated that the purchase of the property can be only on the 'prior written approval from the Financial Institution'. As far as clause 7(c) is concerned, which permitted termination of the lease, the proviso appended thereto contemplated three stipulations; namely, 90 days prior notice indicating informing the intention to exercise such rights against the lessee and obtaining of the 'No Objection Certificate' from the Financial Institutions along with the most important stipulation of clearing the outstanding dues payable to the financial institutions.

6. Amongst the plaintiff and the defendant, since the defendant specifically adopted a stand about termination of the lease by letter dated 31.01.1991, in the whole process, the petitioner, who has stepped into the shoes of the three lenders, in the form of an Asset Reconstruction Company, was never involved. By specifically referring to clause 7(b) and by observing that there was no compliance of clause

7(b), which contemplated a prior written approval from the financial institutions, it was held that the plaintiff was not entitled for a declaration that it can purchase the said property rights in the subject property, as a result, the suit came to be dismissed with costs by recording that the plaintiff had failed to prove that the Lease Deed is/was subsisting and therefore the plaintiff is not entitled for any other relief including the right to purchase the said property as well as the other relief of claiming the entire property to itself on payment of certain consideration.

7. Being aggrieved by the said decision, Alchemist Asset Reconstruction Company Ltd., who in the wake of the three registered Deeds has taken over the assignments from IFCI, IDBI and ICICI has filed the First Appeal, as it was never heard nor it was impleaded as a party though issue no.4 was answered by the Court in the affirmative by stating that lenders are the necessary parties to the proceedings.

8. As far as the First Appeal No.17/2022 is concerned, the appellant is aggrieved by the findings on merit rendered, involving a lease between the plaintiff and the defendants and whether the lease was subsisting or terminated by the defendants.

9. On hearing Mr Rao as well as the learned counsel for the appellant Sima Hotels & Resorts Ltd., a consensus is expressed that the matter be remanded back to the Trial Court for impleadment of Alchemist Asset Reconstruction Company Ltd. and by keeping all the rights and contentions of the respective parties open so that the Asset Reconstruction Company can also express its say, specifically as regards compliance of clause 7(b) as well as 7(c) of the Lease Deed dated 25.11.1987, Exhibit C-30.

10. The learned counsel appearing for Dugal Projects. Development Company Ltd., however, would object to the remand of the proceedings as he would press into service the Misc. Civil Application No.2226/2025(F) filed by him, wherein he has sought for dismissal of the appeal, by relying upon Section 7(3) of the Securitisation Act to be read along with the Securitisation Companies and Reconstruction Companies (Reserve Bank) Guidelines and Directions 2003, Guidelines on Asset Reconstruction and Securitisation framed by the RBI and in particular Guideline no.10 in form of plan for realisation of financial assets. It is his submission that in terms of clause 7 of the directions of 2003, there is a time limit for realisation of the payments and the plan for realisation to be adhered to by every securitisation company or reconstruction company and the policy which is to be formulated by it would only permit realisation of the amount within period of 8 years from the date of acquisition of financial assets concerned.

With this preliminary objection, the learned counsel for the defendant has argued that the appeal filed by the Alchemist Asset Reconstruction Company Ltd. cannot be entertained.

Though we could pronounce upon the merits of the said contention, since we find that the guidelines/the directions are prima facie not of imperative nature and ultimately the terms of the agreement would be governed by the contract that is signed by the lender company and the Asset Reconstruction Company, it would depend upon the terms and stipulations contemplated therein.

In any case, we do not desire to pronounce upon the merits of the matter, as we are already inclined to remand the proceeding in Special Civil Suit No.18/2012 to the Adhoc IInd Additional Senior Civil Judge, Margao with a direction that the Alchemist Asset Reconstruction Company Ltd., the appellant in First Appeal No.38/2022 shall be impleaded as a necessary party, i.e. defendant no.2 and by keeping the rights and contentions of all the parties open and in specific the Reconstruction Company, the effect of clause 7(b) and 7(c) shall be worked out amongst the plaintiff and defendant no.1.

11. In the wake of the aforesaid, we quash and set aside the judgment dated 03.08.2018 while we remand the matter to the Adhoc IInd Additional Senior Judge Civil Judge at Margao. Upon the remand it is permissible for the plaintiff to amend the plaint and it is also open for the defendant no.1 as well as the newly added defendant no.2 to file their written statement and tender evidence in support of its claim before the Trial Court. Since we have noted that the proceedings are pending for more than a decade, we expect expeditious disposal of the proceedings by the Trial Court.

All rights and contentions are kept upon.

12. At the request of the respective counsel, we deem it appropriate to record that parties shall mark appearance before the Trial Court on 29.09.2025 at 10.00 a.m.

ASHISH S. CHAVAN, J. **BHARATI DANGRE, J.**