

dishanagvekar

IN THE HIGH COURT OF BOMBAY AT GOA
SECOND APPEAL NO.11 OF 2026

LINDO FURTADO AND 3 ORS
Versus
MARIAMMA PHILIP AND ANR

... APPELLANTS
... RESPONDENTS

Mr. Vishal Sawant, Advocate for the Appellants.
Ms. Apeksha Kalokhe, Advocate for the Respondents.

CORAM:- AMIT S. JAMSANDEKAR, J.

DATED :- 24th April, 2026

P.C.:

Heard learned Counsel appearing for the Appellants.

2. Admit the Second Appeal on the following substantial questions law:

a) Whether the Ld. District Judge-I has grossly erred in holding that the appellants had not paid the maintenance subscription to the Sonali Flat Owners Association which was an essential term of the Contract and hence they cannot seek specific performance of the Contract in view of Section 16(b) of the Specific Relief Act, 1963?.

b) Whether the Ld. District Judge-I has grossly erred in misinterpreting the provision in clause 2 of the Agreement dated 5/10/1998 which pertains to payment of subscription amount by the

Appellants to the Association upon transfer of the ownership of the flat to the Appellants?

c) Whether the Ld. District Judge-I has grossly erred in allowing the appeal of the respondents on the ground of non-payment of the maintenance subscription to the Association, holding that the appellants shall not be entitled to a conveyance of the flat in their favour, when payment of the maintenance subscription was not a precondition to the execution of the Deed of Conveyance of the said flat in favour of the Appellants as per the agreement dated 5/10/1998?

d) Whether the Ld. District Judge-I has grossly erred in not considering the fact that the Sonali Flat Owners Association is not an Association registered under the Societies Registration Act, 1860 or under the Goa Co-operative Societies Act, 2001, it has no legal status and hence it is not entitled to receive any monies from the flat Owners?

e) Whether the Ld. District Judge-I has grossly erred in not considering the fact that due to the non-transfer of the ownership of the flat in the name of the Appellants by the Respondents 1 and 2 they are unable to join the flat owners association and therefore it is inconceivable as to how they are liable to pay the maintenance subscription to the Association even though they have taken possession of the flat?

f) Whether the first appellate court could have dismissed the suit for specific performance of contract filed by the appellants on the ground of non-payment of maintenance subscription to the society, when the counter claim filed by the respondents seeking a direction to the appellants to pay the societies maintenance charges amounting to Rs. 66,000/- and electricity bill outstanding amount to Rs. 15,889/- pertaining to the suit flat was rejected and there was no challenge to the same by the respondents?.

g) Whether the Ld. District Judge -1 has failed to Exercise the discretion vested in him by law by not considering the grounds for review cited by the appellants in their review application?.

h) Any other substantial question of law that may be urged at the time of arguments.

3. The suit was filed by the Appellant seeking specific performance of the Agreement dated 05/10/1998. The learned Trial Judge has decreed the suit in favour of the Appellant and has dismissed the counterclaim filed by the Respondent.

4. The Appellant is aged 90 years and the Respondent is aged 87 years. The controversy involved is narrow, pertaining to a clause of the said Agreement in respect of which specific performance has been

sought.

5. Having regard to the advanced age of the Appellant and the Respondent, the Second Appeal shall be taken up for final hearing on 30/04/2026, first on board.

AMIT S. JAMSANDEKAR, J.