

**BEFORE THE MAHARASHTRA REAL ESTATE
APPELLATE TRIBUNAL, MUMBAI**

Misc. Application No. 420/2023 (Delay)

In

Appeal No. AT006000000154464 of 2023

Ananth Venkatesan & Anr.

... Applicants

Versus

Rare Township Private Limited

... Non-applicant

Adv. Namrata Solanki for Applicants.

Adv. Rubin Vakil for Non-applicant.

**CORAM : SHRIRAM R. JAGTAP, MEMBER (J) &
DR. K. SHIVAJI, MEMBER (A)**

DATE : 23rd April, 2024

(THROUGH VIDEO CONFERENCING)

ORDER

[PER : SHRIRAM R. JAGTAP (J)]

- 1) The applicants, who are allottees, have moved this application for condonation of delay of 302 days caused in preferring appeal on the grounds enumerated in the application primarily on the ground that the applicants had sufficient cause for not preferring appeal within the period of limitation.

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- 2) For the sake of convenience, the Applicants and Non-applicant will hereinafter be referred to as "Allottees" and "Promoter" respectively.
- 3) The applicants claimed that impugned order was uploaded on 1st April 2022. The limitation period of 60 days to file appeal against the impugned order expired on 1st June 2022. The applicants could not file the appeal within the period of limitation as applicants were under bonafide impression that the non-applicant/promoter will comply with the impugned order. Moreover, non-applicant/promoter had assured the applicants that he is going to comply with the impugned order. The non-applicant did not adhere to his commitment and filed Appeal No. AT006000000073856.
- 4) The applicants further claimed that on 5th May 2022, the applicants were served with the copy of appeal memo by email. However, at the relevant time the mother/mother-in-law of applicants were suffering from acute disease as a result thereof the applicants were not able to discuss the matter with their Advocate.
- 5) The applicants further claimed that even after filing of the appeal, the promoter did continue negotiations with the

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applicants with regard to impugned order. The appeal filed by promoter was listed for hearing on 7th September 2022. However, during that period, the mother/mother-in-law of applicants were diagnosed with breast cancer. Therefore, the applicants were not in a mental state to file or ponder over filing of the cross appeal, so they had just informed their Advocate that the non-applicant has filed appeal against them and instructed their Advocate to put appearance in the appeal filed by the non-applicant. The seriousness of the promoter in filing the appeal was confirmed when the promoter has filed compliance affidavit in his appeal on 15.03.2023. Soon after compliance report of non-applicant, the applicants had discussion with their Advocate and upon advice of the Advocate, they have decided to file the captioned appeal.

- 6) The applicants further claimed that the email communications reveal that by email dated 2nd March 2023, the promoter had called upon the applicants to attend the meeting with regard to the subject project which was held on 11.03.2023. In the said meeting the status of the project was discussed along with negotiations with regard to the impugned order. The applicants did not feel necessary to file the captioned appeal

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because the promoter had impressed the applicants that he is going to settle the matter by obeying the impugned order. After filling of compliance report by promoter in his appeal, the applicants felt it necessary to file the captioned appeal. The delay is not intentional. The applicants/allottees have sanguine hope of success in appeal. The meritorious case of applicants/allottees cannot be thrown out at very threshold and if the delay is condoned the highest that can happen is that the cause would be decided on merits. With these contentions, the applicants/allottees have prayed to condone the delay of 302 days.

- 7) Non-applicant/promoter has remonstrated the application by filing affidavit in reply contending therein that, non-applicant has denied the allegations and the grounds put forth by the applicants in their application. Non-applicant claims that the grounds put forth by the applicants for condonation of delay are frivolous and are not justifiable for condonation of delay of period of more than 302 days in filing the captioned appeal. The promoter has denied that there were continuous negotiations between the parties as alleged by the applicants. Without prejudice to these contentions, the promoter has

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further submitted that the settlement talks between the parties, if any, are always without prejudice to the rights of the parties and same ought not to be made part of the instant proceedings.

- 8) The promoter has further contended that the promoter did comply with the provisions of Section 43(5) of RERA Act, 2016 by 15.03.2023. The promoter since inception was diligently pursuing his appeal. The appeal filed by the promoter is well within limitation and moreover, the non-applicant has complied with the proviso to Section 43(5) of RERA Act, 2016 by depositing the amount as ordered by Tribunal in his appeal.
- 9) The non-applicant/promoter has further contended that applicants have filed the captioned appeal after a delay of more than 302 days as an afterthought with an intent to pressurize the non-applicant so that the promoter can succumbed to their demands. The non-applicant/promoter has further contended that there is delay of more than 302 days in filing the instant appeal. Applicants have failed to justify the cause of the delay in filing the appeal. The applicants have not given detailed account of causes for not filing appeal within the time limit prescribed. The applicants have failed to put

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strict proof thereto. The copies of medical reports annexed to the application are not legible.

- 10) The non-applicant/promoter has further contended that the basis for filing the captioned appeal is that the promoter is not entitled to claim the benefit of moratorium period accorded by learned Authority by impugned order. This fact has been mentioned by the applicants in their affidavit in reply filed in the appeal filed by promoter. However, applicants did not press their said contention in oral arguments and thereafter the captioned appeal came to be filed by the applicants with intent to pressurize the promoter so that the promoter will agree unreasonable demands of the applicant. The promoter has further contended that email dated 2nd March 2023 was a general email issued by the promoter to all the allottees of RAISING CITY PROJECT only for the purpose of discussing the way forward for the project. The non-applicant/promoter has denied that any negotiations with regard to impugned order was discussed as alleged by the applicants. Applicants have failed to compute the period of limitation and further failed to justify the delay. With these contentions, the promoter has prayed for dismissal of application being devoid of merits.

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11) We have heard learned Adv. Namrata Solanki for applicants and Adv. Rubin Vakil for non-applicant. The submissions advanced by learned counsel appearing for respective parties are nothing but reiteration of the contents of application and reply.

12) After taking into consideration the rival contentions of the parties the only following point arises for our consideration and we have recorded our findings thereupon for the reasons to follow:

Point for consideration	Finding
Whether applicants/allottees have established that they had sufficient cause for not preferring the captioned appeal within the period of limitation?	In the affirmative

REASONS

13) The applicants claimed that there is delay of 302 days in preferring the instant appeal. However, while scrutinizing the appeal, the office has recorded that there is delay of 336 days in filing the instant appeal. The applicants claimed that they were under impression that the promoter will comply with the impugned order. Moreover, the promoter had assured them that he would comply with the impugned order, but he did not

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adhere to his commitment and filed appeal against the applicants. It is further contention of applicants that after filing of the appeal a settlement talk was going on between the parties. There were continuous negotiations between the applicants and the promoter with regard to the impugned order. No doubt the promoter has denied these allegations. However, at the same time it cannot be ignored that in para No. 4 of reply, the promoter has categorically stated that without prejudice to above, "it is submitted that settlement talks, if any, are always without prejudice and same ought not to be made part of the present proceedings". This assertion of promoter in his reply strengthens the contention of applicants to some extent.

- 14) It is well settled principle of law that "sufficient cause" should receive a liberal consideration so as to advance substantial justice, when delay is not on account of any dilatory tactics, want of bonafides, deliberate or negligence on the part of applicant/appellant. It has been held by the Hon'ble Apex Court in the case of **Collector, Land Acquisition, Anantnag and another Vs. Mst. Katiji and others** [(1987) 2 Supreme Court Cases 107] that-

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"3 The legislature has conferred the power to condone delay by enacting Section 51 of the Indian Limitation Act of 1963 in order to enable the Courts to do substantial justice to parties by disposing of matters on 'merits'. The expression "sufficient cause" employed by the legislature is adequately elastic to enable the Courts to apply the law in a meaningful manner which subserves the ends of justice- that being the life-purpose for the existence of the institution of Courts. It is common knowledge that this Court has been making a justifiable approach in matters instituted in this Court. But the message does not appear to have percolated down to all the other Courts the hierarchy. And such a liberal approach is adopted on principle as it is realized that-

- 1. Ordinarily a litigant does not stand to benefit by lodging an appeal late.*
- 2. Refusing to condone delay can result in a meritorious matter being thrown out at the very threshold and cause of justice being defeated. As against this when delay is condoned the highest that can happen is that a cause would be decided on merits after hearing the parties.*
- 3. "Every day's delay must be explained" does not mean that a pedantic approach should be made. Why not every hour's delay, every second's delay? The doctrine must be applied in a rational common sense pragmatic manner.*
- 4. When substantial justice and technical considerations are pitted against each other, cause of substantial justice deserves to be preferred for the other side cannot claim to*

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have vested right in justice being done because of a non-deliberate delay.

5. There is no presumption that delay is occasioned deliberately, or on account of culpable negligence, or on account of malafides. A litigant does not stand to benefit by resorting to delay. In fact he runs a serious risk.

6. It must be grasped that judiciary is respected not on account of its power to legalize injustice on technical grounds but because it is capable of removing injustice and is expected to do so.

Making a justice-oriented approach from this perspective, there was sufficient cause for condoning the delay in the institution of the appeal."

15) The Hon'ble Supreme Court in **N. Balkrishnan Vs. M. Krishnamurthy** (1998 Law Suit Supreme Court 872) has held that-

"Rules of limitation are not meant to destroy the right of parties. They are meant to see that parties do not resort to dilatory tactics but seeks their remedy promptly. Law of limitation fixes a life-span for such legal remedy for the redress of the legal injury so suffered. The word sufficient cause as used should receive a liberal construction so as to advance substantial justice. When there is a reasonable ground to condone the delay and that delay was not occasioned deliberately and intentionally, then delay should be condoned."

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16) It is worthy to note that the applicants further claimed that mother/mother-in-law of applicants was diagnosed with breast cancer as a result thereof they were not in the mental state to file or think about filing the cross appeal so they just informed their advocate that the promoter has filed an appeal against them and instructed their advocate to file appearance in the said appeal. The applicants have produced on record the copy of medical paper which supports the contention of the applicants that mother/mother-in-law of applicants was diagnosed with breast cancer. This signifies that the delay is not on account of any dilatory tactics. Moreover, there was no negligence on the part of the applicants but because of aforesaid reasons, the applicants were not able to file appeal within the time limit prescribed.

17) There is no presumption that delay in approaching the court is always deliberate. It must be remembered that in every case of delay, there can be some lapse on the part of litigant concerned. That alone is not enough to turn down the plea of applicants and shut door against the applicants. If explanation does not smack of malafide or is not put forth as a part of dilatory strategy, it is guided that court must show utmost

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consideration to the suitor. After considering the submissions advanced by the advocates appearing for respective parties and perusal of material produced on record, we are of the view that the grounds put forth by the applicants for condonation of delay are sufficient. There is no material on record to show that applicants have malafidely preferred captioned appeal after expiry of period of limitation. Besides, there is nothing on record to show that there were dilatory tactics on the part of the applicants. It is well settled position of law that *//s* is to be decided on merits. Therefore, we are of the view that the applicants have satisfactorily established that they had sufficient cause for not preferring the appeal within the period of limitations. However, considering the peculiar facts and circumstances of the case, we are of the view that delay can be condoned by imposing cost on the applicants. We, therefore, proceed to pass the following order.

ORDER

- a) Miscellaneous Application No. 420 of 2023 is allowed.
- b) Delay is condoned.
- c) The applicants/allottees shall pay cost of Rs.5,000/- to non-applicant/promoter on or before next date.



d) Cost is a condition precedent.


(DR. K SHIVAJI)


(SHRIRAM R. JAGTAP)

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