

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

Misc. Application No. 708/2023 (Delay)

With

Misc. Application No. 221/2024 (Stay)

In

Appeal No. AT006000000174708 of 2023

In

Complaint No. CC006000000089566

M/s. Shree Sadguru & Deluxe JV

... Applicant

Versus

R. Jayanti Rani & ~~Anr.~~

... Non-applicants

Adv. Mr. Jeet Gandhi for Applicant.

Adv. Mr. Sunil Kevalramani for Non-applicants.

CORAM : SHRIRAM R. JAGTAP, MEMBER (J) &

DR. K. SHIVAJI, MEMBER (A)

DATE : 08th May, 2024

(THROUGH VIDEO CONFERENCING)

ORDER

[PER : SHRIRAM R. JAGTAP (J)]

- 1) The applicant, who is a promoter, has moved this application for condonation of delay of 380 days caused in preferring the appeal on the grounds set out in the application, primarily on

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the ground that the applicant had sufficient cause for not filing an appeal within the period of limitation.

2) The applicant claims that the non-applicants had filed complaint against the applicant purportedly under Sections, 12, 13 and 18 of RERA Act, 2016 *inter alia* for execution of agreement for sale, for possession, for interest and for compensation on account of mental agony. After hearing the parties, the learned Authority, while impugned order dated 01.07.2022, was pleased to allow the complaint. Being dissatisfied with the impugned order, the employees of the applicant had given instructions to advocate to file an appeal. The advocate, after receiving all the papers, drafted appeal and shared a draft of the proposed appeal on 12.08.2022 via email address of lavina@chandakgroup.com and wilma@chandakgroup.com.

3) The applicant further claims that on 22.08.2022, the employee of the applicant reverted back to the advocate with some changes and requested the advocate to proceed further and file appeal. The advocate called the employees of the applicant for signature and notarization of the appeal. However, both the employees of applicant left the firm without handing over

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their assignment to new employees who have been appointed in their behalf and therefore new employees were not aware about the proposed appeal as a result thereof, they did not turn up to the advocate for the execution of the documents for filing the proposed appeal.

- 4) The applicant further claims that since the erstwhile employees had to leave the firm in a hurry as a result thereof proper handover of matters could not take place between the employees. Inadvertently, the matter could not be properly handed over by the erstwhile employees. The entire record of the matter was on the email of the erstwhile employees who could not transfer the same to new employees. Owing to such inadvertents, the new employees could not take follow up of the matter. The matter got buried in the influx of litigations which are being pursued by a Real Estate firm on the magnitude of the appellant/applicant and the same remained forgotten until 31.08.2023, when a warrant of attachment was received by the applicant in furtherance to the impugned order.

- 5) The applicant further claims that the current employees of the applicant took search of the records and handed over the

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relevant documents to advocate of the applicant for filing the appeal. Thus, there is delay of 380 days in filing the present appeal.

- 6) The applicant further claims that it is only on 31.08.2023 that the applicant came to know about the matter when the applicant received a notice from the Tahsildar. The applicant, thereafter, traced the matter and contacted its advocate, who had shared draft of the appeal to the applicant. The advocate informed the representatives of the applicant that he is hospitalized owing to his illness and would require some time to trace the matter from the records. The advocate got discharged from the hospital on 08.09.2023.
- 7) The applicant further claims that the applicant was of the legitimate and bonafide belief that the captioned appeal had already been filed and that the same was awaiting a date for hearing. It was only on receiving the warrant of attachment in execution proceeding that the applicant was made aware of the oversight by its ex-employees in filing and prosecution of the appeal against the impugned order. There are just sufficient and reasonable causes to condone the delay in filing the captioned appeal. If delay is condoned, no prejudice would

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cause to the non-applicants. However, if delay is not condoned, the applicant will suffer grave and irreparable harm, damages, loss and injury which cannot be compensated by any means whatsoever. The delay is not intentional. The applicant has strong case on merits and sanguine hope of success in appeal. With these contentions, the applicant has prayed for condonation of delay.

- 8) The non-applicants have remonstrated the application by filing reply contending therein that the applicant has not made out a prima facie case and/or sufficient cause for condoning the delay. The applicant has approached this Tribunal with unclean hands. There is delay of 399 days in filing the appeal.
- 9) The Non-applicants have further contended that email dated 12.08.2022 indicates that it was not only sent to lavina@chandakgroup.com and wilma@chandakgroup.com by Adv. Jeet Gandhi, who has filed the captioned appeal and the present delay application, but was also sent to the common email ID of the legal department of applicant i.e. legal@chandakgroup.com and to the email ID of Kanti Suthar, an employee of the applicant i.e. kjs@neumec.com. Thus, the employees other than two erstwhile employees of the

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applicant also had the knowledge that an appeal needed to be filed against the impugned order. The applicant has suppressed this material fact and therefore on this score alone the instant application is liable to be dismissed with cost. The said email further discloses that the draft of the appeal was approved by Kanti Suthar and Adv. Jeet Gandhi was requested to proceed further in filing of the appeal. Therefore, it was the responsibility of the advocate of the applicant to coordinate with the employees of the applicant in order to get the appeal filed and not that of the employees of the applicant.

- 10) The non-applicants have further contended that the applicant has deliberately failed to specify the full names of the employees along with the exact date on which they had left the applicant firm. The applicant has also failed to annex any documents supporting its claim that the advocate of the applicant had contacted the said employees for signature and notarization of the appeal. Besides, if the new employees did not turn up for the execution of the documents for filing of the proposed appeal, the advocate of the applicant ought to have taken follow up with the new employees for the execution of the documents for filing of the proposed appeal.



- 11) The non-applicants have further contended that whenever any complaint is filed before learned Authority, any order passed in the complaint filed against the promoter, or any non-execution application/non-compliance of order proceedings is filed against the promoter and whenever any date of hearing is scheduled, then as per the standard operating procedure being followed by the learned Authority, the promoter definitely receives an intimation from the learned Authority. The learned Authority used to send intimations through emails to the concerned parties. Accordingly, the applicant must have definitely received multiply intimation emails from the learned Authority as per its standard operating procedure in the complaint proceedings as well as in non-execution application/non-compliance of order proceedings from time to time. This signifies that the applicant was regularly receiving intimation emails from the learned Authority as per its standard operating procedure. Therefore, it can be said that the applicant had full knowledge about the matter since beginning. However, the applicant has falsely claimed that it got knowledge of the proceedings only on 31.08.2023 when

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the applicant received the warrant of attachment dated 29.08.2023.

- 12) The non-applicants have further contended that the limitation period of 60 days to file the present appeal has expired on 30.08.2022. The applicant has filed the captioned appeal online on 04.10.2023 (date of online payment) therefore, there is delay of 399 days in filing present appeal. According to the applicant, Adv. Jeet Gandhi was hospitalized on 1.9.2023 and was discharged from the hospital on 07.09.2023. Therefore, the delay of 7 days due to said hospitalization is negligible in comparison to the delay of 399 days caused by the applicant in filing the appeal. Therefore, this ground is not at all a sufficient cause for condonation of delay. After considering the catena of judgments passed by the Hon'ble Supreme Court, it is seen that the overall conduct of the applicant clearly shows that it did not act diligently, applicant was negligent and remained inactive. The applicant has all requisite and conceivable resources at its disposal to prosecute the appeal in time if there is any pursued grievance against the impugned order. The delay of 399 days which has already been occurred is due to deliberate and intentional act of the

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applicant as applicant remained silent spectator during the period from 01.07.2022 till 31.08.2023. The applicant did not act vigilantly and slept over its rights without any justifiable reason. The conduct of the applicant shows that the reasons offered by the applicant are false, concocted, after-thought, fanciful and flimsy. The applicant has miserably failed to provide any sufficient cause in justifying the inordinate delay that has occurred in filing the present appeal. The application is devoid of merits and therefore, it deserves to be rejected with heavy cost.

13) We have heard learned Adv. Jeet Gandhi for Applicant and learned Adv. Sunil Kevalramani for non-applicant. The submissions advanced by learned counsel appearing for respective parties are nothing but reiteration of contents of application and reply. Adv. Sunil Kevalramani has placed his reliance on following citations:

- 1. 'Esha Bhattacharjee versus Managing Committee of Raghunathpur Academy and others' [(2013) 12 SCC 649].**
- 2. 'Balwant Singh versus jagdish Singh and others' [(2010) 8 SCC 685].**



3. 'Basawaraj and another versus Special Land Acquisition Officer' [(2013) 14 SCC 81].

- 14) After considering the pleadings of the parties, rival submissions of the parties and material on record only point that arises for our consideration is whether the applicant has established that the applicant had sufficient cause for not filing an appeal within the period of limitation? to which our answer is in the negative for the reasons to follow: -

REASONS

- 15) On ensembling the pleadings of the parties and material on record reveals that the impugned order came to be passed on 01.07.2022. The limitation to file appeal against the impugned order has expired on 30.08.2022. Admittedly the appeal came be filed online on 04.10.2023. The applicant was supposed to file appeal within the period of 60 days from the date of impugned order. Applicant claims that there is delay of 380 days in filing appeal; however, after computing the period of limitation in filing the captioned appeal, it is seen that there is an aggregate delay of 400 days in filing appeal. Under the circumstances, it is difficult to agree with the contentions of



applicant for condonation of the said delay of 380 days in filing the appeal as urged by the applicant.

16) The condonation of delay beyond the period of limitation is contemplated only in a case where an aggrieved party intended to file appeal, but the intervening compelling reasons made it impossible for such a party to prefer appeal adhering to the statutory timeline. In the instant case, that is not the case. On careful examination of the application reveals that the applicant is seeking condonation of delay on three grounds vis.

- i) Since the erstwhile employees had to leave firm in hurry as a result thereof proper handover of matters could not take place between the employees. The entire record of the matter is on the email of the erstwhile employees who could not transfer the same to new employees. Owing to such inadvertance, the new employees could not take follow up of the matter.
- ii) Both the employees of applicant left the firm without handover their assignment to new employees who have been appointed in their behalf and therefore, new employees did not aware about the proposed appeal as

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a result there of they did not turn up to the advocate for the execution of the documents for filing of the proposed appeal.

iii) It is only on 31.08.2023, the applicant came to know about the matter when the applicant received a notice from the Tehsildar. The applicant traced the matter, contacted its advocate, who had shared draft of the appeal to the applicant and the advocate informed the representative of the applicant that he is hospitalized owing to his illness. The advocate got discharged from the hospital on 08.09.2023.

17) It is significant to note that it is not in dispute that the application itself discloses that the then advocate of the applicant had sent draft of appeal to legal team of applicant. It is pertinent to note that email dated 12.08.2022 clearly indicates that it was not only sent to lavina@chandakgroup.com and wilma@chandakgroup.com by Adv. Jeet Gandhi who has filed the captioned appeal but it was also sent to the common email ID of the legal department of the applicant. It further transpires from the said email that it was also sent to the email ID of Kanti Suthar the employee of



the applicant. This signifies that the employees other than the two erstwhile employees of the applicant were aware of the fact that an appeal needed to be filed against the impugned order.

- 18) It is significant to note that the applicant has not given the detailed account of employees, who had left the office of applicant i.e. when they had left the office and who took charge of their assignments. The applicant has also not given full name of those employees. No single document is produced on record by the applicant to strengthen its contention that the two employees had left the office of applicant firm without handing over their charge to new employee.
- 19) It is worthy to note that the non-applicants have filed application for execution of the impugned order. It is not in dispute that the advocate of the applicant was continuously and regularly appearing in the said proceedings. Therefore, it is difficult to digest that the applicant came to know about the matter when the applicant received a notice from Tehsildar on 31.08.2023. It reveals from the material on record that the applicant did not take any concrete steps before that for timely filing of appeal. In **Esha Bhattacharjee Vs. Mg. Commit. of**



Raghunathpur Nafar Academy & Ors. [(2013) 12 SCC

649] the Hon'ble Supreme Court has laid down the following principles:

- "15. (v) Lack of bona fides imputable to a party seeking condonation of delay is a significant and relevant fact.*
- 15. (vii) The concept of liberal approach has to encapsulate the conception of reasonableness and totally unfettered free play is not allowed.*
- 15. (ix) The conduct, behaviour and attitude of a party relating to its negligence are relevant factors to be taken into consideration. It is so as the fundamental principle is that the courts are required to weigh the scale of balance of justice in respect of both parties and the said principle cannot be given total go-bye in the name of liberal approach;*
- 15. (x) If the explanation offered is concocted or the grounds urged in the Applications are fanciful, the Courts should be vigilant not to expose the other side unnecessarily to face such litigation.*
- 15. (xi) It is to be borne in mind that no one gets away with fraud, misrepresentation or interpolation by take recourse to the technicalities of the law of limitation.*
- 16. (a) An Applications for condonation of delay should be drafted with careful concern and not in a haphazard manner harboring the notion that the Courts are required to condone the delay on the bedrock of the principle that adjudication of a lis on merit is seminal to justice dispensation system.*
- 16. (d) The increasing tendency to perceive the delay as a non-serious matter and hence lackadaisical propensity can be exhibited in a*

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nonchalant manner requires to be curbed, of course, with legal parameters."

20) A careful examination of application would show that the applicant has miserably failed to offer plausible explanation for condonation of delay. The explanation offered by the applicant does not appeal us to hold that the applicant has established that the applicant has sufficient cause for not filing the appeal within the time limit prescribed. The applicant has miserably failed to specify the full names of the employees along with the exact date on which they had left the applicant firm. Besides, it is for the advocate of the applicant to take follow up with the new employees for the execution of the documents for filing of the proposed appeal. According to applicant, Adv. Jeet Gandhi was hospitalized on 01.09.2023 and was discharged from the hospital on 07.09.2023. We are of the view that the delay of 7 days due to said hospitalization is negligible in comparison to the delay of 400 days caused by the applicant in filing the appeal. Therefore, it can be said that this ground is not at all a sufficient cause for condonation of delay. The applicant has all requisite and conceivable resources at its disposal to prosecute the appeal in time if

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there is any pursued grievance against the impugned order. The delay of 400 days which has already occurred is due to deliberate and intentional act of the applicant as applicant had remained silent spectator during the period from 01.07.2022 till 04.10.2023. The applicant did not act vigilantly and slept over its rights without any justifiable reason.

21) The explanation offered by the applicant for condonation of delay is not satisfactory and it appears to be frivolous. The applicant has failed to file appeal on time and chose to do so only after 400 days and as per its own convenience. The said situation can only be termed as non-seriousness of the applicant, and the other party cannot be left to suffer and desolated. Thus, the averments made in the application qua delay of 400 days cannot be classified as a reasonable delay in any manner.

22) The condonation of delay is an exception which should not be used as per convenience of the applicant. Overall conduct of the applicant reveals that applicant is found to be negligent, not acted diligently and remained inactive. The applicant did not bother to protect its own interest and remained as a silent spectator without any sufficient cause for almost 400 days.



The approach of applicant is found to be casual, non-seriousness and non-vigilant in preferring appeal against the impugned order.

- 23) For the foregoing reasons, we are unable to accept the contentions of the applicant and find that sufficient cause is not made out for inordinate delay in filing instant appeal. We are of the considered view that the applicant has failed to establish its diligence and alacrity in filing appeal within the time limit and an inordinate delay that has occurred in filing appeal, therefore, cannot be condoned. Application is devoid of merits and therefore, it is liable to be rejected. We, therefore, proceed to pass following order:

ORDER

- a) Miscellaneous Application No. 708 of 2023 is dismissed.
- b) In view of dismissal of Delay Condonation Application, appeal will not survive and the same is accordingly dismissed.
- c) Pending Miscellaneous Application, if any, also stands dismissed.
- d) Parties shall bear their own costs.

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e) Copy of this order be communicated to learned Authority
and respective parties as per Section 44(4) of MahaRERA
Act, 2016.


(DR. K SHIVAJI)


(SHRIRAM R. JAGTAP)

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