

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

**MISC. APPLICATION NO. 203 OF 2023
(for setting aside ex-parte order)**

IN

APPEAL NO. AT006000000021462 OF 2019

Reliance Industries Limited

.. Applicant
(Orig. Respondent No.3.)

In the matter between-

Heavy Hydraulics (India) Pvt. Ltd.

...Appellant

Vs.

- 1] Raghuleela Builders Pvt. Ltd.
- 2] Wadhwa Group Holdings Pvt. Ltd.
- 3] Reliance Industries Limited

...Respondents

Adv. Mr. Rubin Vakil for Applicant/Respondent No.3.

Adv. Mr. Shishir Joshi for Appellant/Promoter.

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

DATE : 9th August, 2023.

(THROUGH VIDEO CONFERENCING)

ORDER

[PER: SHRIRAM R. JAGTAP, MEMBER (J.)



The applicant/respondent no.3 has moved this application for

setting aside orders dated 6.11.2019 and 8.1.2021, whereby This Tribunal decided to proceed with present appeal ex parte against the respondent nos.2 and 3.

2] Brief facts which are necessary for deciding the present application are that on 9.7.2015 an agreement came to be executed between the appellant, Raghuleela Builders Pvt. Ltd. (promoter), Wadhwa Group and Reliance Industries Ltd. (Applicant). There is specific mention in the said agreement that the present applicant (respondent No.3.) is not a promoter. Only respondent No.1 (promoter) will be responsible to construct and handover agreed unit to appellant. Appellant recognizes only respondent no.1 (promoter) as obligor under the agreement and under the MOFA. Despite this the appellant had impleaded the applicant (respondent No.3) in complaint bearing no.CC006000000054960 of 2018.

3] There were no allegations nor cause of action against the applicant/respondent no.3 mentioned in the said complaint. Besides the applicant is not registered as promoter of the subject project in the records of MahaRERA. No summons or Court notice of the said complaint was received by the applicant/respondent No.3.

4] The applicant/respondent No.3 has further claimed that in or around May 2019 the applicant received a letter dated 17.5.2019 of the

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Advocate of appellant serving a copy of captioned appeal. However, the said letter did not disclose when the captioned appeal will be listed nor any subsequent communication was received by the applicant about listing or hearing of the captioned appeal.

5] The applicant/respondent No.3 has further contended that on 13.7.2022 the applicant received notice dated 6.7.2022 issued by this Tribunal. Pursuant thereto the applicant had put its appearance through its Advocate on 14.7.2022 and it was submitted on behalf of applicant that the documents have not been served upon the applicant, as a result thereof this Tribunal was pleased to direct the appellant to serve the documents upon the applicant. Despite the directions the appellant did not furnish documents to applicant. On the next date of hearing i.e. 25.8.2022 the applicant was constrained to point out to the Tribunal that the copies of Misc. Applications in the matter still remained unserved in spite of clear directions of the Tribunal to appellant to do so. This Tribunal again on 25.8.2022 directed appellant to serve the documents upon applicant. In absence of documents the applicant was not in a position to effectively appear and defend the present proceedings. Even though the applicant was served with appeal and Misc. Applications, the appellant never brought to the notice of the applicant that an exparte order has

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been passed against the applicant.

6] The applicant has further claimed that the first appearance of the applicant was on 14.7.2022 when the appellant and respondents were absent. The applicant became aware of the order dated 8.1.2021 passed in captioned appeal during the hearing held on 7.2.2023. Immediately thereafter on 8.2.2023 the applicant applied for certified copy of all orders passed in this proceedings and received copies of the same on 16.2.2023. From the orders it revealed that on 6.11.2019 this Tribunal was pleased to pass an order that appeal is to proceed ex-parte against the applicant/respondent No.3. Thereafter appellant had amended the appeal in October 2020. No summons or Court notice was received by the applicant either in the application for amendment or even otherwise.

7] It is further contention of the applicant that office premises of the applicant was not functioning from March 2020 till December 2020 and thereafter from April 2021 till August 2021 and had very restricted movements of its employees on account of Covid 19. In April 2022 the appellant has brought to the notice of the Tribunal that Insolvency proceedings have been commenced against the respondent no.1.

8] It is further contention of the applicant that under Regulation 13 of the Maharashtra Real Estate Appellate Tribunal Regulations 2019,

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the appellant was bound to serve summons of the present proceedings upon the applicant. The notice was served for the first time on the applicant in July 2022 and the applicant put its appearance in the present proceedings and continued appearing without any default. Prior to notice dated 6.7.2022 no summons or notice was served upon the applicant. The applicant has further contended that if the said orders are not set aside the applicant will suffer grave and irreparable loss, as a result thereof the applicant will be prevented from defending the present proceedings on merits which is against the principles of natural justice. The applicant became aware of the passing of order dated 8.1.2021 only during the hearing held on 7.2.2023 and passing of order dated 6.11.2019 only upon receipt of certified copy of the order dated 16.2.2023. The appellant has no cause of action against the applicant, inter alia, for the reasons that the applicant is not a promoter of the subject project. Under the sale agreement the appellant has expressly stated that it shall have no cause action against the applicant. All obligations and responsibilities in respect of construction were that of respondent no.1 (promoter).

With these contentions the applicant has prayed to set aside orders dated 6.11.2019 and 8.1.2021 and the applicant be permitted to defend the appeal by filing reply. If impugned orders are not set aside, the

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applicant will suffer grave loss and injury and if impugned orders are set aside no prejudice will be caused to the appellant.

9] The appellant has filed reply to the application and resisted the application by contending therein that the applicant has suppressed relevant facts in the matter to mislead the Tribunal. The appellant has at least on four occasions i.e. 17.5.2019, 10.1.2020, 22.10.2020 and 21.12.2020 served appeal memo and Misc. Applications upon the applicant with intimation of next date of hearing. The applicant has suppressed this vital fact from this Tribunal. Mere plea of technicality of absence of service of summons cannot justify the continued absence of the applicant in the proceedings from 2019 to 2022. Pursuant to directions of this Tribunal, the appellant had issued letters to the applicant thereby intimated the next date of hearing of the matter to applicant.

10] The appellant has further contended that the present application is hopelessly barred by law of limitation and the same should not be entertained in the absence of any prayer for condonation of delay with supporting cogent reasons for the same. The applicant does not specify the locus-standi of the applicant for seeking to set aside the orders dated 6.11.2019 and 8.1.2021. The applicant has moved present application with an intention to prolong the matter. The respondent no.1

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has undergone insolvency and the appellant has taken out Misc. Application No.378 of 2022 to implead the Resolution Professional Ms. Vandana Garg in place and stead of respondent no.1. Any concession on the part of this Tribunal to set aside the orders dated 6.11.2019 and 8.1.2021 will hamper the hearing of the said application as well as hearing of appeal.

11] It is further contention of the appellant that the appeal was filed in 2019 and the same was served upon all respondents including applicant. The Advocate of the appellant had served appeal by letter dated 17.5.2019 on the applicant which was duly received and acknowledged by the applicant. The address of the applicant in the said letter is same as the address mentioned in the present application. Apart from this, the applicant has not denied the service of appeal memo and therefore, the applicant was bound to put its appearance and participate in the proceedings immediately after the service of letter dated 17.5.2019. Pursuant to the directions of this Tribunal, the Advocate for the appellant filed affidavit dated 3.10.2019 of service of the proceeding of appeal upon all respondents including the applicant. This Tribunal noticed absence of applicant about 5-6 months and recorded in the Roznama that the matter shall proceed ex-parte against the applicant by its order dated 6.11.2019.

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This signifies that no fault can be found in the service of the appellant upon applicant.

12] The appellant has further contended that the appellant had filed Misc. Application No.49 of 2020 for amendment of appeal and it was served upon the applicant vide letter of the Advocate for the appellant dated 7.1.2020. The applicant had received the same on 10.1.2020. There was specific mention of the next date of hearing as 14.1.2020 in the letter dated 7.1.2020. The applicant had not only received the proceedings, but was also aware of the next date of hearing i.e. 14.1.2020. It is further contention of the appellant that Misc. Application No.49 of 2020 for amendment to appeal was allowed by this Tribunal vide order dated 9.10.2020. Pursuant to directions of this Tribunal the Advocate for appellant served copy of amended appeal memo on all respondents including applicant by letter dated 20.10.2020 by RPAD dated 21.10.2020. The applicant received copy of amended appeal memo on 22.10.2020. On the basis of affidavit of service dated 23.10.2020 and material on record this Tribunal was pleased to pass an order that appeal shall proceed ex-parte against the applicant. The applicant had ample notice of proceedings and in spite of which the applicant did not put appearance which speaks volume of the conduct, intention and ulterior motive on the part of the

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applicant.

With these contentions, the appellant has prayed for dismissal of instant Misc. Application with costs.

13] We have heard arguments of learned Advocate Mr. Rubin Vakil for applicant/respondent no.3 and learned Advocate Mr. Shishir Joshi for appellant. The submissions advanced by learned Advocates are nothing reiteration of contents of application and reply. Learned Advocate Mr. Shishir Joshi for appellant has placed his reliance on the following citations-

- (1) **Esha Bhattacharjee Vs. Managing Committee of Raghunathpur Nafar Academy & Ors.**
[(2013) 12 SCC 649].
- (2) **Basawaraj & Anr. Vs. Special Land Acquisition Officer.** [(2013) 14 SCC 81]
- (3) **Motang Infrastructure Pvt. Ltd. Vs. Ashwin Joseph Manappatty.** [2023 DGLS (Mah.REAT 125)].

14] After considering the pleadings of the parties, submissions advanced by learned Advocates for respective parties and material on record, only point that arises for our consideration is whether the applicant/respondent no.3 has assigned good cause for its previous non-

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appearance? To which our answer is in the negative for the reasons to follow.

REASONS

15] Order IX Rule 7 of the Code of Civil Procedure pertains to the consequences of non-appearance of defendant/respondent. Rule 7 speaks that where the Court has adjourned the hearing of the suit ex- parte, and the defendant, at or before such hearing, appears and assigns good cause for his previous non-appearance, he may, upon such terms as the Court directs as to costs or otherwise, be heard in answer to the suit as if he had appeared on the day fixed for his appearance. The underlying objective of Order IX Rule 7 of the Code of Civil Procedure is to prevent unnecessary delays in the judicial process. By allowing the Court to proceed in the absence of defendant/respondent, the Rule aims to maintain expeditiousness of the proceedings while protecting the right of the plaintiff to a fair trial.

16] It is specific contention of the applicant/respondent no.3 that the applicant had received a letter dated 17.5.2019 of the Advocate of the appellant serving copy of captioned appeal memo somewhere in the month of May 2019. However, the said letter did not disclose the date of hearing i.e. when the captioned appeal will be listed for hearing and also

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there was no subsequent communication about listing or hearing of captioned appeal and therefore, applicant/respondent no.3 did not put its appearance in the matter. The applicant/respondent no.3 has placed on record a copy of letter dated 17.5.2019. On examination of the same, it reveals that there is no mention about the next date of hearing in the matter. Therefore, we are of the view that there is substance in contention of the applicant/respondent no.3 that applicant had received letter dated 17.5.2019 of Advocate for appellant, but for want of mentioning the next date of hearing in the said letter, the applicant did not put its appearance in the matter.

17] The next contention of the applicant is that on 13.7.2022 the applicant had received notice dated 6.7.2022 issued by this Tribunal. Pursuant thereto the applicant put its appearance through its Advocate on 14.7.2022. The contention of the applicant is that after 17.5.2019 the applicant did not receive any communication from the side of appellant about listing of the captioned appeal till the applicant receives notice dated 6.7.2022 issued by this Tribunal. According to applicant This is a good cause for its previous non-appearance. However, we do not find substance in the contention of the applicant.

18] While refuting the aforesaid contention of the applicant, the



appellant has relied upon the affidavits filed by the Advocate for appellant. It is specific contention of the appellant that the appellant had at least on four occasions i.e. 17.5.2019, 10.1.2020, 22.10.2020 and 21.12.2020 served appeal memo and Misc. Applications upon the applicant with intimation of next date of hearing in the matter. It is not in dispute that the appellant had filed Misc. Application bearing No.49 of 2020 for amendment of the appeal and the same was allowed. According to appellant, the appellant had served copies of Misc. Application No.49 of 2020 and amended appeal memo on the applicant. Despite this the applicant intentionally did not put its appearance in the matter. A careful examination of affidavit dated 23.10.2020 (page-342) and the annexures thereto would show that the appellant had by letter dated 20.10.2020 served copy of amended appeal memo on the applicant. The appellant had also intimated the next date of hearing in the matter as 29.10.2020 by the said letter to applicant. It further reveals that the tracking report clearly indicates that the postal Authority had delivered the item to applicant.

19] On scanning the affidavit dated 14.1.2020 and annexures thereto would show that by letter dated 7.1.2020 the appellant had intimated the next date of hearing in the matter as 14.1.2020 and

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requested the applicant to remain present. The tracking report shows that the Postal Authority had delivered the said item to applicant i.e. it confirms the delivery of item to applicant/respondent no.3.

20] A perusal of affidavit dated 5.1.2021 and annexures thereto would show that by letter dated 16.12.2020 the appellant had communicated the next date of hearing in the matter as 8.1.2021 to applicant and requested applicant to remain present. The tracking report shows that the postal officials have delivered the item to applicant/respondent no.3. It is worthy to note that all these tracking reports show the delivery location as "Nariman Point".

21] It is pertinent to note that the applicant has not denied the fact that the address of the applicant/respondent no.3 mentioned in the aforesaid letters is correct. It is not the case of the applicant that the address of the applicant/respondent no.3 mentioned in the affidavit of service, appeal memo and in the letters referred above is incorrect. It transpired from the material on record that the applicant was duly served with appeal memo thrice and also was given intimation of the next date of hearing. Despite this the applicant did not put its appearance. The applicant has miserably failed to assign good cause for its non-appearance on 29.10.2020, 14.1.2020 and on 8.1.2021. Application is devoid of merits

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and therefore orders passed by this Tribunal deciding to proceed ex-parte against the applicant/respondent no.3 cannot be set aside. Consequently, we proceed to pass the following order-

ORDER

- 1] Misc. Application No. 203 of 2023 stands dismissed.
- 2] Parties to bear their own costs.


(DR. K. SHIVAJI)

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(SHRIRAM R. JAGTAP)